RECORDKEEPING: HIT AND MISS

Applied Recordkeeping

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Applied Recordkeeping

2015, July 27: EDRMS, folders, and all that stuff

There's a seriously interesting discussion taking place on the NZ List. Participants so far include such Kiwi luminaries as Russell Clarke, Paula Smith, and Jackie Jean.

If you're not on that List and are interested in the structuration (formerly known as classification) of records you should find a way of viewing it. You will be stimulated to ask questions such as : "is it about document control (a worm's-eye view) or context control (an eagle's-eye view) or is it about both?" and then "what else might it be about?" and "what is it that we need to be about?".

2015, October 22: The characteristics of a register

<<Barbara Reed: The UK Government Digital Service is doing some thinking about registers. And looking at potential uses of blockchain as a technology to support registers. In the process they are musing on registers, and I found this post on the characteristics of a register really interesting>>

<<Andrew Waugh: Interesting indeed. Although, I would make one comment: that they are specifically thinking about collections of digital data that they are calling a 'register' (as opposed to a database). I'd need to think a little about paper registers to decide if they are bending the concept of 'register' to fit the characteristics they desire.>>

2015, October 23:

The list of missing or lost documents relating to Shorten's time as Secretary of the AWU is growing :

- Notes taken by Julian Rzesniowiecki from Theiss Holland and lodged (perhaps) at Recall - the lost in transit excuse;
- Now AWU records of invoices pertaining to payments made by Winslow Constructors - the lost in migration excuse + the 7 years excuse for good measure.

How could registration apply in this situation? Registration (in the traditional sense) is part of a process, not identical to (but not a million miles away either) from logging actions - like an audit trail. It cannot be defined solely by characteristics of the data and, although that appears to be what the UK Government Digital Service is doing, their definition is really pointing to process features as well. Like a cartulary, a register is a record in its own right. What people want to get their hands on in the Shorten case are the records of action, not a register of the documentary objects that may provide evidence of what occurred and who did what.

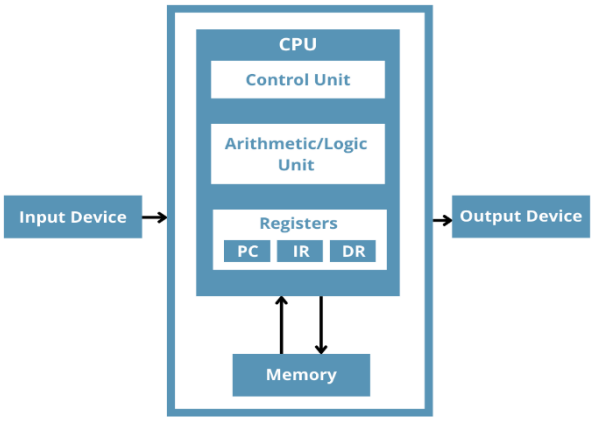
- A register of documentary objects could establish the existence of such documents (e.g. when incorporating Mr Rzesniowiecki's notes into a r/keeping process), it could also track their whereabouts (e.g. transfer of custody from Theiss Holland to Recall and their location and movement afterwards), and it could also go some way to establishing the contents (e.g. if the registration took the form of a calendar and provided a summary of the contents). If a movement register was used, it would not be possible simply to say the records could not be found, it would also be possible to say they are not where they ought to be. Recall seems to be saying "we do not lose documents and if these documents existed and had been lodged with us we did not lose them". But it isn't clear if anyone is in a position to say, on the basis of registration evidence, whether the Rzesniowiecki documents ever existed or (if they did) that they were ever lodged with Recall. We have Rzesniowiecki's word for the former and Theiss Holland's word for the latter. Registration, contemporary with the events under examination, would add weight to the claims and possibly some insight into the fate of the records. They would also provide circumstantial evidence that might trip someone up who wasn't telling the truth. But the registrations would not be probative of the facts being sought as to Shorten's and the AWU's conduct.
- Invoices are not typically "registered" in the same way that documentary objects are in a registry system. A financial accounting system operates as a kind of registration-based process, however. The records of invoices, payments, receipts, journals, and the whole paraphernalia of financial recording (including financial reporting that establishes that the events being documented actually occurred) raise legitimate inferences about the existence of documentation that amount to the same thing as registration (viz. if there was a payment there must have been an invoice otherwise

the protocols were breached). Presumably, AWU is not in a position to deny the payments so they have to explain the lack of invoices. A financial system can (in accordance with accounting protocols) do much the same job as a registration system.

All this is a long-winded, Friday-afternoon, goofy kind of way of agreeing with Andrew that

<< they are bending the concept of 'register' to fit the characteristics they desire>>.

I have no doubt that the concept of registration will remain relevant in the digital environment and that it will have to be "bent" to adapt to changing circumstances – even by extending 'registration' to include self-referencing systems such as financial accounting systems. Would it be out of bounds to say that this post "registers" those of Andrew and Barbara? And if you admit that, that it does so in such a way as to preserve (on the face of it) the content of those postings. But it might be said to fail the "immutability" test (no. 5) because an email trail can be falsified.



PS. One issue that they don't seem to have dealt with (and it relates to the role of a register as record in its own right) is the relationship (e.g. in time) between the registration and the event or circumstance being registered. A contemporary registration of the movement of the Theiss Holland records made as part of a routine process applied to all such movements is obviously more persuasive than one cooked up after the event from memory.

2015, November 20: Accessing old emails

<<Andrew Waugh: Main agency being investigated in royal commission cannot produce relevant emails as there is too many (millions) that need to be restored to 'modern format' from 'obsolete' systems. Almost certainly they mean restored from back up tapes. Note there is *no* discussion of the idea that the emails should have been filed in a recordkeeping system.>>

<<... Commissioner Wilson said: "I can see considerable effort has gone into this matter, but I'm very concerned at how far there is to go." She said "the development of archive systems has not kept pace with email as the preferred means of communication"...>>

Do we agree that "*... the development of archive systems has not kept pace with email ...*"? If we were asked for our professional take on this situation, what would it be? How's this :

1. What is involved, in the name of all that's holy, that is going to take them until August next year? Why is volume a problem. Is only one obsolete format involved or many? Are they reconstituting them from paper? The story makes it sound as if searching is not a problem once the emails are restored. Why is volume is a problem for reconstituting the emails but not for searching them once they have been reconstituted? The story makes it seem that it is a problem of volume rather than obsolescence and that doesn't ring entirely true.

2. If "*most State Government departments have complied*" but "*Education and Health said they had been swamped by the enormous volume*", has anyone thought to ask how diligent the other government departments have been? Is it possible they are similarly unable to search voluminous emails in obsolete formats and just haven't bothered to come clean. Why are some Qld Government departments able to do it but not others?

3. They seem to be saying the emails have been kept but are not usable. If it's possible to reconstitute them and make them usable, why wasn't it possible to keep them usable all along? Keeping emails in an obsolete format that does not allow them to be "searched" has got nothing to do with the development of archival systems. This is about management, not technical issues. Waiting until they're needed and then claiming their recovery is costly, time-consuming, and difficult because you haven't kept them usable is bad management.

4. How are emails supposed to be managed by the agencies in the Qld Government? What standards exist within the Qld Government about it? Are they being followed? Are they being enforced? What is the state of r/keeping in Qld : touchy, feely, helpful OR rigorous, prescriptive, and enforced (just so we know what to expect in future)?

5. As Andrew suggests, they seem to have no conception of how emails need to be integrated with documentation in other formats and in related processes.

Isn't this the kind of thing we should be speaking out about publicly? Saying -

- it is possible to keep emails so that they remain usable when they're needed;
- there's not much point keeping them if they're not usable when you want them;
- caution is needed when looking at email in isolation from other records.

I once went to a conference on discovery and it was like attending two conferences. There were 2 kinds of papers, delivered in no particular order and w/o reference to each other :

- Some were based on the premiss that "sooner or later you're going to be hit with discovery and when you are you need to have kept you're records like this <<insert speaker's nostrums here>> so that your records are in apple-pie order and you'll be able to meet it;
- The remainder were based on the premiss that "sooner or later you're going to be hit with discovery and when you are your records will be in a mess and this what you have to do <<insert speaker's nostrums here>> so that you can get yourself out of difficulty.

We seem to have an example of the second approach here.

<<Andrew Waugh: I don't know the exact reasons they are having problems, but I'd suspect the most likely problem is that the emails have been 'archived' onto tape. If this is the case, to access them would require the tape to be read and the emails reloaded back into an instance of the email application. In the worst case, the 'archive' might be a backup. You then need to create an empty instance of the (possibly obsolete) email application, and then reload one set of backups, capture the emails, and then do the same again for the next backup. Once you have restored the emails you then need to export them to another system for processing. This is not quick or cheap.

As for the recordkeeping problem. Investigatory bodies don't care that "emails need to be integrated with documentation in other formats and in related processes." Or, rather, like other researchers, they are used to collecting evidence from multiple sources and integrating it into a coherent story. That's their job. They don't need a recordkeeping system to do this. Nor do they need archivists (or record keepers) telling them to weigh the context of the evidence.

My observation is that investigators have woken up that email is a far better source of information about who, what, when, and why than the formal recordkeeping system. A couple of years ago the then Victorian Auditor General and the then

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Ombudsman independently told a conference of Victorian records managers that, while their investigators look at the records, the smoking gun is always in the email. Every recent governance investigation I've read - both within government and outside - builds its story around email. And some, like the Debelle inquiry in SA specifically mention the lack of value of the official files.

I believe that this is because the modern notion of a 'file' is inherently flawed - it's not created to facilitate the work, but it's instead a collection of transactions consciously selected by the participants after the event. Email, on the other hand, is a log of transactions between the participants automatically collected as the participants communicate to carry out their work. (This is not to say that email is perfect - in particular uncontrolled deletions are a significant problem.) Looked at this way, it's not surprising that email is more valuable than the official file in governance investigations.>>

<< I'd suspect the most likely problem is that the emails have been 'archived' onto tape ... requir[ing] the tape to be read and the emails reloaded back into an instance of the email application. In the worst case, the 'archive' might be a backup.>>

If your suspicion is correct, and in order to know we would first have to ask the question, that makes my point for me - which was that it's not (as reported) that "archiving" per se hasn't kept up with email but rather the sloppy way in which they chose to "archive" these emails that is the problem here.

<< Investigatory bodies ... are used to collecting evidence from multiple sources and integrating it into a coherent story. That's their job.>>

Quite so. From what I can see they have a good understanding of context and structure and need no instruction from us. My comment was that none of that came out in the ABC report. My suggestion that WE make a comment was not that the investigators need to be taught by us how to do their job but that (again) the reporting suggested none of that nuance and that if WE don't bring it to the fore in the public commentary no one else is likely to do so. It is in our interest that those views are ventilated in public.

<< email is a far better source of information about who, what, when, and why than the formal recordkeeping system. >>

They like email certainly and because it is ubiquitous it is an essential evidentiary source. But their liking for it (again based on the ABC reporting) doesn't appear to have led them to the conclusion that because it's so important then the approach taken to its management is critical and that is what I was suggesting we say publicly. I doubt investigators need to be told that but my remarks were about the public debate not the state of the investigators' minds. My point about "other records" had little to do with r/keeping systems and "the files", but rather about the context and detail provided by other processes and other kinds of documentation (regardless of whether or not they are formal, whatever that means). Important though they are, I doubt investigators need to be told that emails don't stand alone. In much of the private sector the "official file" no longer exists.

So, none of the three points I suggested WE make were intended to be directed at the investigators. The purpose, in my mind, was using this instance to make a public case for a systematic approach to r/keeping (not for r/keeping systems), and to go on doing so when similar cases arise – to inform the public of our message (if we can agree what that should be). I would agree, however, that if the best we can do is bleat about the supposed virtues of r/keeping systems and files, we had better stay silent. As you suggest, the investigators are focussed on their investigation and some of the comments (as reported) suggest to me that where we might have something to say to them (as well as making a contribution to the public debate) is on the issue of whether they should regard these failings (when they arise) as lapses or systemic.

2016, January 4: Copyright Act amendment

<<Andrew Waugh: DOCA have released an exposure draft copyright amendment bill for consultation. The changes (among other things) concern the library and archives sectors. The draft is available ...>>

The place to start is (as always) with definitions :

> *s*.10 (1)... *"archives "* means:
> (a) archival material in the custody of:
> (i) the National Archives of Australia; or
> (ii) the Archives Office of New South Wales established by the *Archives Act* 1960 of the State of New South Wales; or
> (iii) the Public Record Office established by the *Public Records Ac* t 1973 of the State of Victoria; or
> (iv) the Archives Office of Tasmania established by the *Archives Act* 1965 of the State of Tasmania; or
> (aa) archival material in the custody of a person (other than the National Archives of Australia) in accordance with an arrangement referred to in section 64 of the the *Archives Act 1983* ; or
> (b) a collection of documents or other material to which this paragraph applies by virtue of subsection (4).

So far as I can see, there doesn't seem to be a definition of "archival material" or of "library".

> *s*.10 (3) In this Act, unless the contrary intention appears: ...
> (b) a reference to the body administering a library or archives is to be read:
> (i) in the case of archives covered by paragraph (aa) of the definition of *archives* in subsection (1)--as a reference to the person having the custody of the archives in accordance with the relevant arrangement referred to in that paragraph; or
> (ii) otherwise--as a reference to the body (whether incorporated or not), or the person (including the Crown), having ultimate responsibility for the administration of the library or archives; and
>
> *s*.10 (3A) For the purposes of this Act, something held in, or forming part of, the collection of any archives covered by paragraph (aa) of the definition of *archives* in subsection (1) is taken not to be held in, and not to form part of, the collection of the National Archives of Australia. Note: Paragraph (aa) of the definition of *archives* covers archival material in the custody of a person other than the National Archives of Australia under an arrangement referred to in section 64 of the *Archives Act 1983* .
>
> *s*.10 (4) Where:
> (a) a collection of documents or other material of historical significance or public interest that is in the custody of a body, whether incorporated or unincorporated, is being maintained by the body for the purpose of conserving

and preserving those documents or other material; and

(b) the body does not maintain and operate the collection for the purpose of deriving a profit;

paragraph (b) of the definition of *archives* in subsection (1) applies to that collection.

Example: Museums and galleries are examples of bodies that could have collections covered by paragraph (b) of the definition of *archives* .

Library material has been identified as stuff collected by libraries but we know that archives (material) exists regardless of whether or not it is placed in an archives (institution). Library material is just plain stuff until it is gathered by a library but archives (material) does not have to be gathered – it can be defined in other ways. Unfortunately, copyright ideas about archives have been distorted by analogy with libraries and collection-focussed archives (institutions) with vested interests to defend have done little to disabuse legislators of the distortion. The copyright focus is on the activities of the archives (institution) rather than dealings with the archives (material). Archives institutions were originally identified by name or type, historical vestiges of which remain to be seen in 10(1)(a), whereas libraries (and museums) were defined generically by function or purpose. For some time it was difficult for programs handling archives (materials) that were part of a larger corporate entity to be fitted in. It was (and remains) quite impossible to fit in archival activities that are not undertaken by a "collecting institution" of some kind. The present Act resolves some of these issues and the proposed amendments don't seem to change that. So far as I can see, you can still become an "archives" under 10(4) if you engage in preservation. If you engage in digital preservation, however, you would seem to qualify for the privileges only of you grant access – 16(d) Digital preservation and research copies will be required to be made available to people at libraries, archives or key cultural institutions, but on a restricted basis so that a person cannot electronically copy the material or communicate it to the public. These provisions are intended to complement other provisions in the Act relating to use of copyright material in libraries and archives - regardless of your access policy (but I may be misreading). I would need to refresh my memory on the status of preservation copies of non-digital material.

More of a worry is the continuing emphasis on collections – viz. the relevant provisions apply to things done with a "collection" gathered by an archives defined as a place in which "archival material" is to be found instead of things done with materials that are archival and the purposes for which those things are done (regardless of who does them or where they are done). Amongst our key r/keeping issues have always been :

- Preservation copying
- Unpublished works
- Unknown authors
- The copyright clock

These are all raised in the "Guiding Questions" document but so obscurely there and in the draft legislation that it will take a while (for me at least) to get my head around what is good or bad in what is now being proposed. There is some clarification of the copyright clock. Has anyone figured out how to date data yet? So far as digital materials are concerned, it looks as if migration and rendering must be dealt with as a form of preservation copying which is, I suppose, where you end up if your focus is on collections - 16(b) There will be no limit on the number, version or format of copies that can be made for preservation purposes, consistent with best practice - but what the new legislation has to say about transformation (i.e. replication of a record in a changed context or structure) is not clear to me. Ditto what (if anything) is changing in regard to the curious concept of key cultural institutions – existing Act s.51B?

Will ASA be making a submission? If so, I return to my central concern and urge it be considered. These changes continue to operate primarily with regard to "collections" which are "held" by identified or identifiable "institutions". Once and for all (maybe not), is that how we want archives to be understood and have we yet matured sufficiently in our own understanding to suggest anything different? If we continue NOT to raise a voice in objection whenever a key defining characteristic of archives (material) is said to be that it has been gathered by an archives (institution) then that will be the definition of archives we will have to live with.

<<Andrew Waugh: My understanding is broadly the following... (but please see the caveats at the end)

1. Preservation copying: Preservation activities are allowed by any public library, public archive, or key cultural institution. A public archive or library is one where (part of) the collection is open to the public - presumably this prevents private individuals or organisations declaring their collection as an archive or library and taking advantage of the provisions. A key cultural institution is primarily one set up by act of parliament to build a collection. Since most such institutions would already be public archives or libraries, this provision is presumably to cover those institutions with collections that are not open to the public. Such institutions can only avail themselves of the provisions for the bit of the collection that is of historical or cultural significance. It's not clear what 'open to the public' means - does it cover, for example, agency archives that contain FoI'able records? Or a society's archives that are open to any member of the society?

The library or archive can only preserve material that it either holds in 'original form' (i.e. manuscript or the master copy of a recording or a film), or for which another copy cannot be obtained in the required form. The last is restricted to forms that are best practice for preservation of that material. Also, note that this test is absolute - you either can obtain it, or you can't. It doesn't provide an exemption, for example, if it can be obtained but only at an extremely high price. These conditions are clearly designed to limit the preservation features to bits of the collection that are unique or no longer commercially available.

Public libraries and archives (but not key cultural institutions) can also undertake activities that support 'research', and it specifically mentions a 'research copy'. It would appear that this picks up on the copyright exemption for 'research' and means that libraries and archives can do things necessary to allow their patrons to conduct research. (This would explain why key cultural institutions do not get this exemption - they are implicitly not open to the public. However this assumes that a court won't decide that an organisation must be either a public library/archive or a key cultural institution, but not both.)

Material produced for preservation purposes, or research, can be made available to the public. However, the material must be made available electronically, must be made available only on-site, and in such a way that an electronic copy cannot be saved or communicated. Note there is nothing in the draft act to prevent a paper copy being produced for the patron, but other than this there is no way for a patron to take advantage of their right under the Copyright Act to a copy of a reasonable portion of a copyright material.

2. Unpublished works: Specifically covered. Unpublished works generally have the same copyright duration as published works - 70 years after the death of the author. Major advance. (Note that this advance is required by the recent trade agreement Australia agreed to.)

This change will take effect on 1 January 2018. The two year delay is specifically to give owners of unpublished work the opportunity to publish before the rules change.

I've used the old term 'published' here as it simpler. The terminology has actually changed in the draft act. It's now 'made public. This is merely a change in terminology as the underlying meaning is the same.

3. Unknown authors: If the author is 'not generally known', the copyright on unpublished works generally runs for 70 years after date of creation. Authorship is generally known if it can be ascertained by reasonable inquiry. The author has to be not generally known for the entire 70 year period. Exactly how this plays out if the author was once generally known (e.g. by an organisation), but the information has since been lost, is not clear.

There is one exemption to the duration on unknown authors. If an unpublished work of an unknown author is published within 50 years of the date of creation, the copyright clock is reset and now runs for 70 years. This provision seems curious as if an approved publication is issued, this means that someone knows who the author is, and this situation is covered by the general rule.

No guidance is given on what happens if the author and date of creation are unknown.

4. Orphan works: No progress. If the author is known, copyright exists until 70 years after the authors' death. It's up to the user to find out when the person died, and who subsequently owned (owns) the copyright.

5. Caveats: This is my understanding after reading the draft and considering it for a couple of hours. I found the drafting very peculiar. The text is frequently convoluted, with meanings implicit in subtle changes in words between clauses. There would appear to be significant scope for disagreement and odd legal decisions.>>

2016, January 5:

<<Rowena Loo: Thanks Andrew for that summary. I picked up similar from my brief reading. One concern I have is the limitations on the use of preservation and research copies - that they can only be made available 'at' the library or archives, which seems unnecessarily limiting. The obligation on the institution to ensure that the copy cannot be copied electronically and it cannot be communicated to the public seems quite onerous. In addition to undermining the fair use provisions that Andrew has already noted. The failure to address orphan works is disappointing.>>

<<Lise Summers: ... I had not picked up on the limitation on communicating preservation copies! The draft seems a hasty response to the FAIR campaign, and is not well thought through. Fair use is not undermined so much as simply not addressed.>>

<<Andrew Waugh: While I agree, it's a relatively common position. It's basically an electronic version of the standard library model, and is consequently easy for stakeholders to understand and accept. A number of cultural institutions already do it - from memory the British Library is an example.

Technically, it's relatively straightforward. Use a modern PC and glue up the USB ports. Isolate the PC behind a firewall so it can only talk to your servers. Lock down installation of software (but every public access PC would do this).

It should be noted that some of these amendments are required of Australia due to various international treaties and agreements. Certainly this is true for the exemptions to support people with disabilities, and the harmonising of the published/unpublished copyright terms is a requirement in the TPP.

Partly for this reason, I think that the amendments are a done deal. Little can be done to change the basic principles of the amendments. I would like to see a push to improve the drafting so that what can be done is clearer.>>

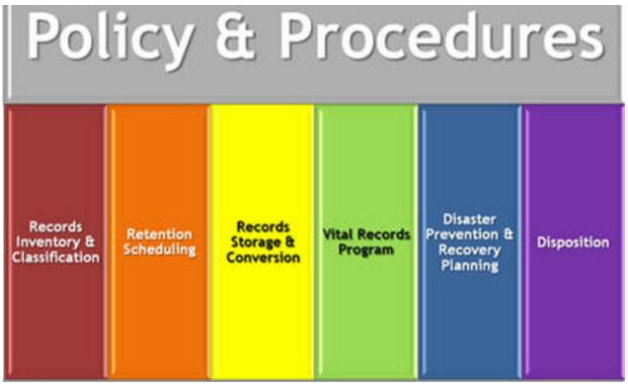
2017, November 25: Heard of the WofG?

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 prioritising 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 categorized, 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!

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 3: Auditing process not outcomes

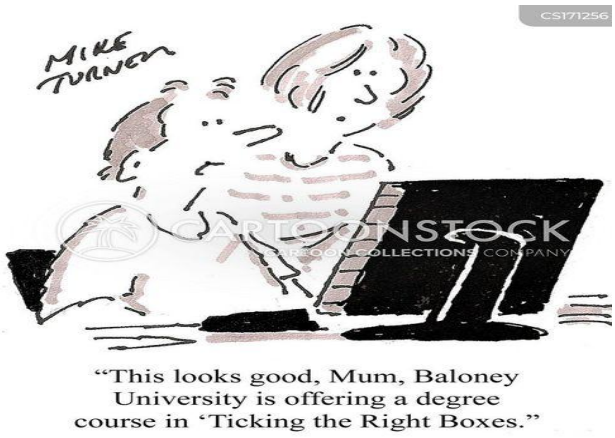
ABC News has a great story about Aged Care. Why should this matter to r/keepers (I hear you ask)? Because it is really a story about the way performance is measured, about failed systems for monitoring and evaluating performance (any performance) and that could just as easily apply to r/keeping audits.

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.

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.

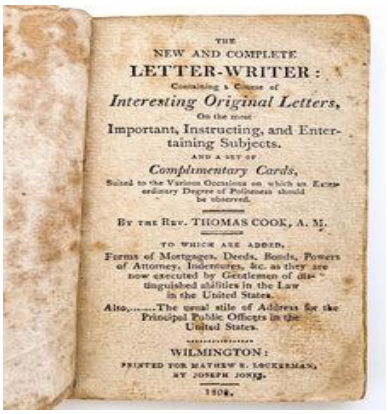
2019, January 15: Mind boggling Federal court decision

<<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>>


THE
NEW AND COMPLETE
LETTER-WRITER:
Containing a Course of
Interesting Original Letters,
On the most
Important, Instructing, and Entertaining Subjects.
AND A SET OF
Complimentary Cards,
Suited to the Various Occasions on which an Extraordinary Degree of Politeness should be observed.
By the Rev. THOMAS COOK, A. M.
TO WHICH ARE ADDED,
Forms of Mortgages, Deeds, Bonds, Powers of Attorney, Indentures, &c. as they are now executed by Gentlemen of distinguished abilities in the Law in the United States.
Also,.....The usual stile of Address for the Principal Public Officers in the United States.
WILMINGTON:
PRINTED FOR MATHEW S. LOCKERMAN,
BY JOSEPH JONES.
1804.

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 ooo,ooos 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, February 13: 1889 Recordkeeping advice

<<Andrew Waugh: What do you think of this US advice on recordkeeping for railway companies from 1889? It's surprisingly timeless. I particularly like the reference to a shredder...

The constantly increasing accumulation of books and papers in the offices of any large road becomes in the course of years, without an intelligent system of arrangement, an unwieldy mass of material from which it is difficult to extract any information. With the best of care such accumulations are difficult to preserve in good shape; but the difficulty of handling them is much augmented by the careless way in which bundles of old papers or piles of books are often tucked away upon shelves or into vaults without any adequate indication as to whence they came or to what department they belonged. These collections often amount to numbers of tons, and even with the most ample storage facilities the demand for increased room becomes imperative.

In order to provide for the proper care of this class of material, two things should be carefully looked after when storing and arranging it. The first is that all papers which have outlived their usefulness should be promptly disposed of by sale or in some other way. In the second place such papers as are valuable enough to be kept should be stored in such shape that they will be safe from fire, dirt or dampness, and labelled or catalogued in such manner that they can be readily referred to. It is true that such arranging takes a little time and expense, but it is more than made up by the saving in time when some particular paper or book is being sought for.

There are upon different roads different policies in regard to the time that the various classes of papers shall be held before being destroyed or disposed of. As a rule, it may be conceded that all contracts and agreements, together with all books and records relating to the organization, history and general accounts of the company, should be preserved with the greatest care, as should all vouchers, pay-rolls and other evidences of money paid out, when the question of such payment might be brought up in the future. All original letters and impressions of letters sent should be preserved, as they will, as a rule, give the full history of any transaction. Other classes of material which relate chiefly to the detail of collecting the company's revenue, such as station abstract books, the tissues of joint billing, the freight expense and way bills and many other forms can safely be destroyed after a few years, say five or six, when there is no longer any chance of their being needed to refer to in any possible claims against the company. Other papers and books, like old shorthand books, pass stubs, ordinary telegrams and the numerous papers that accumulate each year in any office may, as a rule, be made away with after they have been kept on hand a year, and the quantity of miscellaneous reports, statistics and papers of this character is very large. Statistics and reports that have been received by different offices may, as a rule, be safely destroyed if the office in which they originated keeps, as it should do, complete files. It is usually much easier to go to the original office for information than to hunt over the files of the receiving office after years have elapsed.

When we have decided to do away with old papers that have accumulated, the question arises as to the best method of disposing of them. As a rule it is better to put such material into the waste paper, as the sum so received, though small compared with the original cost, is not to be despised. Any papers with which there is a danger of misuse if in improper hands, may be burned or ground up so that their identification will be entirely lost. We have seen a little electric motor running a set of revolving knives which occupies by little room in one corner of an office, and which grinds, or rather cuts, papers passed through the knives into small shreds, which form excellent paper-making material. Cancelled tickets, station remittance sheets, old checks, drafts, or paid pay roll checks, are all good material to dispose of in this manner.

If once a year a clearing up was made by each department or office and the antiquated and useless books and papers sorted out by some competent person, it would be surprising as a rule to see how large a quantity of material would be eliminated; and how much more easily the balance could be arranged and classified. To repeat a little, it may be laid down as a general rule that all papers and books that have been used are either worth preserving or they are not. If they are worth keeping, they should be properly cared for. If they are only fit

> for the waste paper pile, the sooner they are put into it the better. Their room is saved for something useful, and as a rule neatness is much increased by their disposal, and the damage from dirt and chance of loss by fire much diminished.

The advice is from the US weekly publication 'Railroad Gazette' of 8 February 1889.

Love it.

<< Statistics and reports that have been received by different offices may, as a rule, be safely destroyed if the office in which they originated keeps, as it should do, complete files. It is usually much easier to go to the original office for information than to hunt over the files of the receiving office after years have elapsed.>>

If they understood "system of record" that well in 1889, why is it so hard for people to get it in 2019?

2019, February 19:

<<Debra Leigo: ... A beautifully concise disposal schedule which only requires implementation by "some competent person". So simple, and yet here we are ...>>

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.

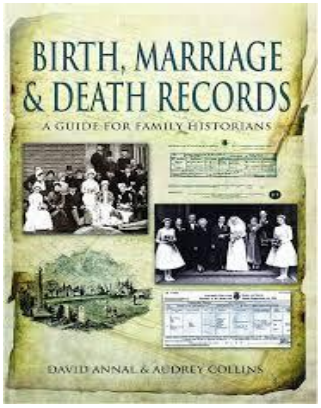
Just how silly is this? A passport is a certificate of identity (that you can carry with you) issued by competent authority that is accepted as *prima facie* proof unless there is reason to doubt it. Any ID works because it certifies that you are who the document says you are on

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.

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"...

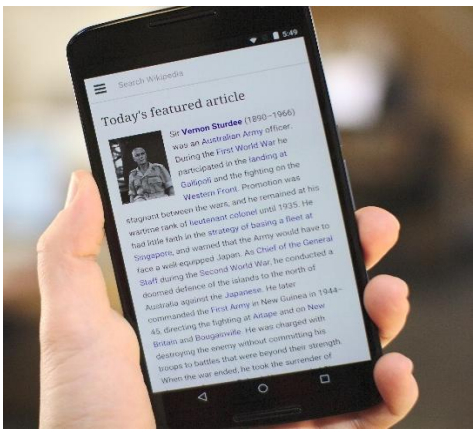
Wasn't I told once (or did I imagine it) that data analysis can discover information but cannot, of itself, reach conclusions or make decisions? Does AI really change that? Does AI sift the stuff according to programmed rules and present the "human teams" with quarry like a hunting dog bringing back 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".

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."

2023, August 28: The cost of recordkeeping

It ain't cheap (it seems)

- The Albanese government is abandoning an attempt to modernise the way businesses record public information such as the identity of company directors, after a review found the Coalition-era project would run more than $2bn over budget. The assistant treasurer, Stephen Jones, is now considering the review's call to instead spend a further $515m returning registry functions to the Australian Securities and Investment Commission and investing to improve data integrity in other ways.
- The program … aimed to improve a "poor digital experience" for 3 million companies and 6 million non-company Australian Business Number (ABN) holders, and to minimise fraud and business misconduct, including registration of fictitious characters as office-holders on the companies register. But the program ran into trouble due to a "significant underestimation of program complexity", the review said … "The review concludes that the [program] should be stopped, as the economic benefits from the program do not justify the level of additional expenditure required."

… at least, if it ain't done properly.

Unacceptable Losses

2015, September 14: Clinton: personal vs official

From ABC News :

Hillary Clinton was within her rights to delete non-work-related emails from her personal email account while working as secretary of state, the US justice department says …

> "*There is no question that former secretary Clinton had authority to delete personal emails without agency supervision*," the department wrote in a document filed this week in US District Court in Washington. "*She appropriately could have done so even if she were working on a government server … Individual officers and employees are permitted and expected to exercise judgment to determine what constitutes a federal record*," the department said.

Mrs Clinton has apologised : "*That was a mistake. I'm sorry about that. I take responsibility*," she said … "*As I look back at it now, even though it was allowed, I should have used two accounts, one for personal emails, one for work-related emails*."

Judicial Watch president Tom Fitton dismissed the justice department's argument as having "*absolutely no merit*"… He said Mrs Clinton "*may like to pretend it's a personal server … That's up for debate. She set up this system to conduct all of her government business and then she just took it without prior review*," he said. "*And now the government is saying*

that she has the [unprecedented] right … to go into this system, and take out what she thinks is personal and leave whatever she thinks is government." Mr Fitton said the justice department was "*undermining its own investigation of this issue while also providing a defence for Mrs Clinton personally*," a move he said also "*benefits her political aspirations … [If] this is allowed to go by, our open records law ends*," Mr Fitton said.

Lots of muddle here :

1. The DoJ is surely correct to say that it makes no difference (except, perhaps, in legalistic terms of ownership) whether the emails were on a "personal" server or a government server. What matters is whether or not she was conducting official business. The obligation is (or should be) to make and keep full and accurate records of official business. The question that might be asked is whether an official is allowed under US government recordkeeping rules to set up a "personal" server (or a personal system, or a personal vault, or a personal space, or a personal back-room, or a personal anything) for that purpose. Mrs Clinton says "it was allowed". How comes that about?

2. Would it make any difference if she had run two accounts – one personal and one work-related? If she is allowed to make the classification what does it matter where and when she makes it? It's the same decision if made before sending/receiving or while the system was being used or long afterwards when the spaghetti has hit the proverbial. How would you control incoming emails to ensure work-related incoming emails went to the correct box? A third account for "pending classification", perhaps?

3. Mr Fitton is surely correct to say that (although the question of what is personal and what is work-related is a matter of judgement) an argument that Mrs Clinton has the unfettered and absolute discretion to say which is which and to get rid of stuff w/o supervision has no merit. Perhaps the DoJ argument goes on to say that such judgements must be exercised within rules, parameters, and guidelines that limit the discretion and are clearly stated somewhere. Where the outcome of the classification is unreviewed destruction of the emails judged to be personal, the decision is essentially an appraisal. Appraisal without guidelines is caprice.

Back in the day, I was in the thick of the bru-ha-ha between CAO and NLA over personal papers. I was forever being told off by Peter Scott and Keith Penny to lay out examples for big-wigs to scrutinise so they could tell us which was which (believing that we were being stupid and making difficulties where they didn't exist). Even where a single document had a mixture of official and personal matter, they usually managed to classify the material as one of the other to their own satisfaction. The thing was that each big-wig made a different division of the spoils along that blurred and ambiguous boundary. 'Nuf said. From that experience, I reached certain conclusions:

- Trying to make a hard-and-fast distinction between official and personal is a fool's errand.
- The best result is to persuade creators to act responsibly (rather than compelling them to make a choice).
- That means leaving appraisal and custody (and access) in some measure up them even if it involves some leaving some official records outside of open records law.
- The focus should be on r/keeping procedures that limit the use of "personal" systems, rather than launching into appraisal and custody disputes after the fact.
- The alternative is deprive officials of the right to have personal systems, to legislate that such systems (my g-mail account, for e.g.) are prima face government controlled. Hah!

So, I'm a bit conflicted here. Mrs Clinton says she was allowed to set up a "personal" system on which to conduct official business. So, the US Government r/keeping rules seem pretty slack. If I were Mr Fitton, I would be focussing on preventing a future Secretary of State from setting up a personal system like this and conducting official business on it - making it an offence, perhaps, to do what she did (create and maintain official records outside an environment that is under government ownership and control). What was the Profs Case about if not the extension of government control over official email? As usual, however, this kind of story is being played out in the rear-view mirror not on the road in front of us.

2015, November 26: Private email and the public interest

<<Mark Brogan: Today's edition of the Guardian/au carries a story by Paul Farrell about a failed FOI request made by Guardian Australia. The Guardian attempted to access Prime Ministerial email relating to the official business of the Prime Minister, allegedly hosted on a private email account. The revelation that Turnbull was maintaining and using such an account dates from October 2015, when the Australian fist revealed its existence. The story likens Turnbull's email practice to that of Hilary Clinton, who was forced into an embarrassing back down over her use of private email while US Secretary of State. You can find the Guardian article at ...

Turnbull's defence can be found at ...

In his defence, Turnbull says that he would never use private email for any classified matter. Re-assuring but fails to deal with accountability issues that arise from the use of private email for official business.>>

2015, November 30:

None of this is new. Remember the lack of transparency with ministerial "advisers" and their records – cf. Children Overboard? Long before that, we have had the phenomenon of "personal papers" – viz. officials (esp. ministers) conducting official business in "writing" but not incorporating it in the official records. It was concluded when we were drafting the Archives Act (C'wealth) that the phenomenon could not be controlled legislatively and that control over such documentation, where it comes to be in existence, had to be left with the official concerned.

It's All About the Rules: Whether it should be allowed to exist in the first place is a disciplinary matter – rules (if any) binding ministers and officials in the making and keeping of records of official business. If a minister is subject to a disciplinary system and flouts the rules that is prima facie corruption. Such rules (if they existed) would not allow Turnbull to make up arguments as he goes along as to what he can and can't record in "private" channels. There would be rules about it and that would be that. His conduct could be measured to see whether or not he was breaking those rules regardless of his personal opinions. It is interesting, is it not, that when politicians do this they make it sound as if their unregulated conduct is in fact conforming to some rule or other that they don't bother to state (Turnbull

said at a press conference in Sydney on Friday that he does not use a private email account to send classified government information. "The answer is I can't do it and I wouldn't do it and I protect classified information very carefully.). He didn't put classified information into a private email. So what? Was that the rule PM? Where does it say so PM? Does that also mean that the rule you seem to be alluding to says it is OK to put non-classified official information into a private email? Tell us where to find it.

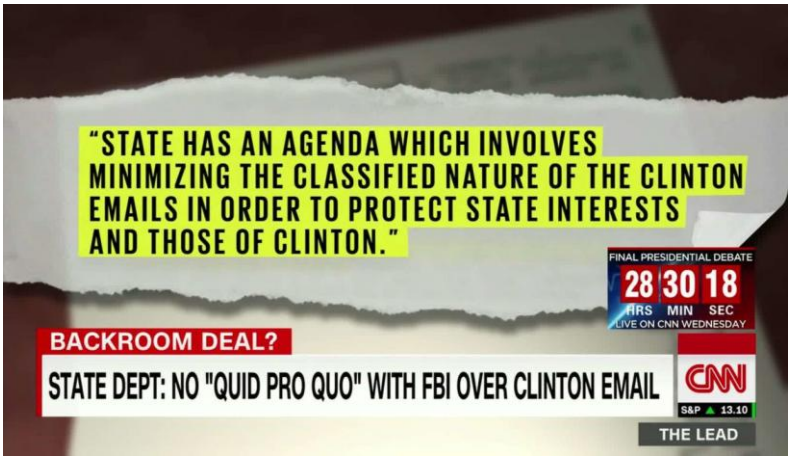
Ministers Are Accountable under FOIA: It seems the FOI request was made to the department and it also seems to be agreed that the department does not control them (or, at any rate, the system on which they are held). The question then is this : how comes it about that a person holding the office of PM is able, within the rules, to keep records of official business on a "private" system? The answer (apparently) is because there are no rules to prevent it. Next question : Why not? But FOIA also applies to –

> *"official document of a Minister* or *official document of the Minister"* (this means a document that is in the possession of a Minister, or that is in the possession of the Minister concerned, as the case requires, in his or her capacity as a Minister, being a document that relates to the affairs of an agency or of a Department of State and, for the purposes of this definition, a Minister shall be deemed to be in possession of a document that has passed from his or her possession if he or she is entitled to access to the document and the document is not a document of an agency.

So, why doesn't Paul Farrell make his request to Turnbull himself rather than the PM's department? The article labelled "Malcolm Turnbull defends…" says as much :

> Earlier a spokesman for Turnbull defended the prime minister and said most government correspondence was not subject to sensitive security markings. "Many MPs and ministers use private messaging systems – including SMS, WhatsApp, Wickr, etc and private emails etc – for non-sensitive material for reasons of convenience and superior functionality," the spokesman said. "All communications or records of a minister which relate to his or her duties are (subject to many exemptions) potentially subject to [freedom of information] whether it is on SMS, a private email server or a government email server.

As I understand it, however, that only applies while the minister is in office.



The Red Herring – We must Move with the Times: They scoff that ministers must communicate using modern methods. Well, who said they shouldn't? It's about how their use of modern devices for the conduct, inter alia, of official business is approved and regulated, not about whether or not they use them. The *Security Manual* (which may or may not apply to Ministers) is cited and it apparently says : "Agencies must not allow personnel to access non-agency approved web–based email services from agency systems," But this is not about email services from agency systems it's about systems that are completely outside of official control.

We Should Be Campaigning on This: This would seem to be a public issue that it would be worth our while, as r/keepers, to nail to our mast : Establish binding rules in all jurisdictions on how ministers and advisers make and keep records of official business. Absolutely no use raising issues like that while controversy is raging over a particular case and politicians are bloviating about it. Remember how "concerns" about advisers and their recordkeeping faded? They always do fade and the substantive issues along with them. A campaign has to be on-going during the quiet time, aimed at keeping things rank and smelly for when the next scandal breaks (as it most assuredly will one of these days).

2015, December 4:

<<Mark Brogan: Should rule making exclude Ministers from operating private email accounts in the interests of complete, accessible records of ministerial actions and decision making? If implemented, does this amount to infringing the rights of Ministers as citizens unreasonably? What kind of rulemaking is required and what kinds of processes should operate to ensure that accountability processes are not compromised by the email practices of Ministers?

In response to a NY Times article that former Secretary of State, Hilary Rodham Clinton, had potentially alienated Federal email records via private use of email, the Chief Record Officer of the United States, Paul Wester wrote to the State Department on 3 March, 2015. He asked it to report to the National Archives and Record Administration within 30 days on the Department's execution of its responsibilities under Federal Records Law. Wester concluded:

> **"If Federal records have been alienated, please describe all measures the Department has taken, or expects to take, to retrieve the alienated records. Please also include a description of all safeguards established to prevent records alienation incidents from happening in the future. Please also provide NARA all guidance and directives disseminated within the Department that address the management of email records, including those records created using personal email accounts." (1)**

The State Department replied on April 2, 2015. Its response begins with a declaration of its commitment to partnership with National Archives and Records Administration to "address the evolving complexities of email vis-a-vis government records life cycle management." Further:

> **"We understand the relationship between a sound records management program, the preservation and life cycle management of the full documentation of the essential evidence of our mission and operations, transparency, and Open Government." (2)**

The letter goes on to reveal a diversity of email practice across the tenure of a number of Secretaries of State including Clinton, Powell, Rice and Albright. To set things right, the Department claimed to have taken the following specific actions pursuant to its responsibilities under Federal Records Law:

> ***The promulgation of Department wide policy in August 2014 that "senior officials should not use their private email accounts for official business."; and**
> ***An effort to recover alienated federal records in the possession of former Secretaries of State.**

In December 2014, it claimed that former Secretary Clinton had provided approximately 55000 pages of emails:

> **"These emails are being reviewed under the Freedom of Information Act and releasable documents will be made publicly available online by the Department."**

Responding to the Department's request, Secretary Rice claimed never to have used a personal email account for official business. In March 2015, Secretary Powell advised that while he had used a private email account, he did not retain these mails or make printed copies. In March 2015, former Secretary Albright advised that "she never used

a U.S. Government email or personal email during her tenure as Secretary of State, and did not have a personal email account until after she left government service."

The letter concludes with a directive from the current Secretary of State, John Kerry, to the Department's Inspector General requesting that he make recommendations for "improving the Department's recordkeeping and FOIA practices"

(1) National Archives Letter to the State Department 3 March 2015. Retrieved from .... (2) State Department's Response to National Archives letter 2 April, 2015. Retrieved from ...>>

<<Andrew Waugh: In this discussion it should always be remembered that Australia has a very different political system to the US. Ministers are fundamentally different to Secretaries. US practice and theory is consequently not directly applicable to Australia.

The US has a strict separation of powers: the legislature (Senate and Congress) makes laws; the executive (the President, Secretaries, and public service) execute the laws; the the judiciary (the Supreme Court and all the inferior courts) interpret the laws.

Australia has a Westminster system with responsible government. That is, the executive is responsible to (controlled by) the legislature. This is achieved by requiring the heads of the executive (the Ministers, and the Prime Minister) to be members of legislature. (i.e. Australia, like the UK, does not have separation of powers.)

This means that Ministers, including the Prime Minister, wear four hats:

- **Private citizens, entitled to private personal communications**
- **Members of a political party, who can expect private communications with their colleagues about policy and strategy**
- **Members of parliament, who can expect private communications with their constituents and for their duties as members in general.**
- **Ministers, who have (or should have) no private communications about the execution of their duties.**

US Secretaries (and Presidents) only wear two of these hats, like all other public servants. US politicians wear three of these hats, none of which require their communications to be public records.

In Australia, therefore, it is necessary to divide records created by a minister in their various roles - some are public, some are private. This division is always debatable and will change over time as society's collective view changes. I doubt it will ever be 'Minister's records are all public records'.

This does not mean, of course, that we can't be clearer about the division that is in force at any given moment.>>

Andrew states "the problem" nicely. In their actions and in the resulting documentary detritus, this admixture of roles is unavoidable. Hence our decision back in the 1970s to draft archives law that recognised that, although a minister's personal papers would likely contain official matter, no attempt should be made to apply some dubious measure of what was and what was not, and that (consequently) the decision should be left up to him/her. The best NAA could do was "compete" as a place for lodgement, knowing that some ministers would go elsewhere. From memory, however, in NZ there was a strong indication (if not a rule) that outgoing ministers should deposit with NA (now ArNZ) there. In order to "compete" NAA had to be able to offer similar conditions and this meant handing control over access/custody to the individual even though this gave them (arguably unwarranted) control over official material. But that is the ex post facto situation after the deed is done.

It does not mean that ministers cannot and should not be put under rules in their handling of official business. There are rules/conventions in place here (as already alluded to in the debate) governing how ministers handle cabinet material, security classified material,

etc. Rules relating more broadly to the handling of other kinds of official material are less clear cut perhaps but they need not be (as I have already pointed out). These are rules from within the Executive, they are not imposed on ministers by Parliament (though there's no reason why they couldn't be given legislative sanction). It is not about limiting the use they make of private media or of any other kind of technology. It's about subjecting their use of it to rules relating to how they conduct official business while in office. Those rules (if they exist) apply only to official business – not to private, constituency, party matters etc. They don't say what technology you can or can't use, only to how you can use it for official business. Each minister is responsible for conducting their affairs so that they satisfy their obligations under the rules. How they do it is up to them, so long as the requirement (whatever it is) is satisfied. If there is no rule, there is no issue - apart from debating whether or not there should be.

Constitutionally, I disagree with Andrew as to the situation of ministers. We do have separation of powers here and ministers are officers of the Executive controlled by the G-G; they are not appointed by (and cannot be removed by) the Legislature. It is true that the Governments live or die at the will of the Legislature (except for 1975) and that the Government can ultimately only operate if it has the confidence of Parliament but the separation of the Legislature and the Executive is real enough to make it proper to refer to it as H.M. the Queen's Government (not Parliament's) :

> This is a basic principle of the political systems of modern democracies, be they parliamentary systems, or federal republics, such as the United States ... In Australia's Westminster system of parliamentary democracy, the separation is not total because the Executive Government is drawn from, and accountable to, the Legislature ... Because the Executive sits in Parliament and dominates it to a large extent, the debate about the separation of legislative and executive power is relatively muted in Australia... Australian Politics.com

2015, December 6:

<<Mark Brogan: Similarly, I don't see the doctrine of the separation of the powers as salient since the argument is essentially about the application of records and information access law to agents of executive government (ministers) in the conduct of official business. In both the American and Westminster systems, there is a common expectation bound up in the notion of accountable government, that such law will apply to the business of government transacted by Ministers. Hence Ministers should be discouraged from alienating Commonwealth records through the use of private email systems for government business. Policy and procedure therefore might be applied in a similar fashion to the United States.

On a practical level, there may be some opportunity to get this matter addressed since the PM will no doubt recall the damage inflicted upon him by the Utegate email affair whilst Leader of the Opposition. If a week is a long time in politics, six years may seem like an eternity, but the affair resonates and not all comparisons are correctly regarded as odious.>>

2015, December 9:

<<Andrew Waugh: I would suggest Infosheet 20 from the Parliament of Australia as a more nuanced view of how the Westminster system is applied in Australia. Note that the best that writer can say is that the executive are subject to review by the other members of parliament, particularly the opposition, and, possibly, the upper house.

In response to Mark, the reason the Westminster system is salient is because any 'solution' has to reflect the reality of the various hats the Ministers wear. It is not appropriate, for example, to simply exclude Ministers from operating private email accounts since this does not take into account their role as MPs and as governing figures in the legislature. In these roles it is perfectly legitimate for Ministers to operate private email systems. As Chris says, the correct answer is to distinguish the roles and the consequent responsibilities for records management.>>

2016, March 16: Use of private email by Australian public servants

<<Andrew Waugh: The senior management team of the CSIRO atmosphere and ocean division were verbally directed to use private email accounts to plan job cuts. This was to prevent information leakage and to avoid distress and concern among the staff. Exactly why the director and assistant director thought that using the corporate email would leak information is not disclosed. Presumably they thought that someone (IT staff, their personal assistants?) were reading their email.

Labor suggested that this breached the Archives Act, the Public Governance Performance and Accountability Act, and the CSIRO code of conduct. The AGs office and Finance Department have determined that this was not the case, and CSIRO has assured everyone that the emails were subsequently registered in the record system. That's all right then. Oh, and senior CSIRO staff have been reminded of their obligations to keep proper records.>>

2016, March 17:

FOI contains a possessory test which means that Act can be applied to this situation. The problem with the Archives Act (C'wealth), as previously stated, is the property test in s.3(1):

> *"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;
> but does not include a record that is exempt material or is a register or guide maintained in accordance with Part VIII.

Section 3(6) might be used to introduce what would in effect be a possessory test if the requisite regulations had indeed been made (viz. stipulating that emails dealing with official business in the possession or under the control of a minister or official are deemed, for the purposes of s.3(6), to be Commonwealth records)

> (6) The regulations may make provision under which, in specified cases or circumstances, records of which the Commonwealth or a Commonwealth institution has, or is entitled to have, possession are to be deemed to be Commonwealth records for the purposes of the provisions, or specified provisions, of this Act.

but such a regulation might be challenged on the basis that the Commonwealth does not in fact have a possessory right to official emails out of official custody. Such a regulation has probably not been made anyway (I am open to correction) but if one were to be made it could have interesting consequences for leaked official emails in the hands of journalists.

It is difficult, however, to see which provisions of the Act would be breached by a person or agency simply housing a C'wealth record (or a record deemed to be one under regulation) in a commercial server or storage facility provided they continued to have, or were entitled to

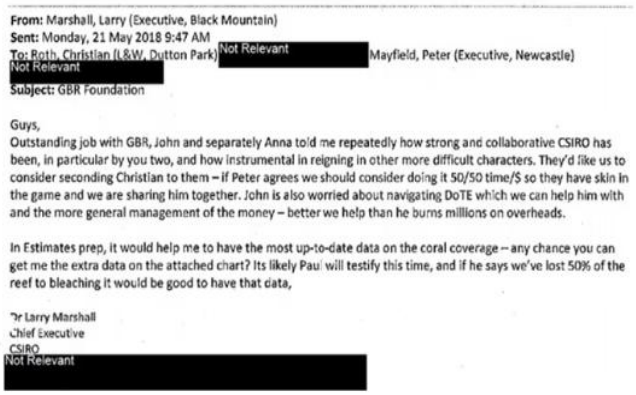
have, possession. A breach might arise if they attempted to dispose of it unlawfully but that is a different case. The use of private emails to conduct official business is undoubtedly a recordkeeping issue but not one, I fear, to which the Commonwealth Archives Act provides an answer.

2018, April 5:

<<Andrew Waugh: The record system proves its worth...

> After being forced to register the private emails into the corporate recordkeeping system, CSIRO was then forced to disgorge them to the Senate. Some have now been released...

It's not surprising the senior staff at the Division were trying to keep the emails secret.>>



From: Marshall, Larry (Executive, Black Mountain)
Sent: Monday, 21 May 2018 9:47 AM
To: Roth, Christian (L&W, Dutton Park) [redacted] Mayfield, Peter (Executive, Newcastle)
[redacted]
Subject: GBR Foundation

Guys,
Outstanding job with GBR, John and separately Anna told me repeatedly how strong and collaborative CSIRO has been, in particular by you two, and how instrumental in reigning in other more difficult characters. They'd like us to consider seconding Christian to them – if Peter agrees we should consider doing it 50/50 time/$ so they have skin in the game and we are sharing him together. John is also worried about navigating DoTE which we can help him with and the more general management of the money – better we help than he burns millions on overheads.

In Estimates prep, it would help me to have the most up-to-date data on the coral coverage – any chance you can get me the extra data on the attached chart? Its likely Paul will testify this time, and if he says we've lost 50% of the reef to bleaching it would be good to have that data,

Dr Larry Marshall
Chief Executive
CSIRO
[redacted]

Great Barrier Reef funding wasted without climate action, experts say

The Federal Government says the $500m package will help tackle local problems like water quality. But without climate action, questions are being asked about whether the windfall will save the reef.

2017, January 30: When is altering a tweet Normal Administrative Practice?

Whoa!

> The US archives agency says President Donald Trump's tweets are considered presidential records that need to be preserved for historic purposes, but officials have yet to say whether his administration needs to preserve even altered or deleted tweets. After a misspelled statement from Trump's private Twitter account was altered on Saturday and later deleted, a National Archives and Records Administration spokeswoman said on Monday that officials had yet to say whether those records are also subject to preservation ... Archives spokeswoman Miriam Kleiman said presidential tweets, like all electronic communications "created or received" by the president or his staff, are considered presidential records.
> - See more at: http://www.skynews.com.au/tech/technews/2017/01/24/is-trump-allowed-to-delete-his-tweets-.html#sthash.TtMsNEfC.dpuf

Is it fanciful to suggest that there may be a conceptual difference between an email passing between two or more addressed parties (correspondence) and a tweet to innumerable and essentially anonymous followers (a broadcast)? What about an email posted to a list? Was the misspelt statement on Trump's private Twitter account actually deleted or merely removed from public view? Is a Twitter account a r/keeping system? If a record of presidential tweets is kept on a WH server, does that mean the requirements can be met by whatever arrangements are made to manage content on that server and Trump (and his advisers) are free to manage tweets on the account (that the public sees) as they please?

2017, March 6: Can of Queensland worms

Qld Minister Mark Bailey is in trouble over his conduct of public business on a "private" email account. These appear to be the facts:

- He conducted correspondence with a stakeholder on a matter of public business using a "private" account opened before he became a minister.
- He deleted the emails w/o obtaining permissions required for destruction of public records.

- The deletion occurred after a Right to Information (RTI) request had been received, arguably with a view to preventing lawful access.
- The RTI request was, in fact, denied on the basis that the emails had been deleted and were not available.
- The Minister is now seeking to "re-activate" the account (? with a view to responding favourably to the RTI request or just to get out of trouble).

Where lies the problem? What is the sack-able offence?

- Conducting official business on a "private" email account in the first place?
- Deleting emails dealing with public business w/o proper authority?
- Deliberately frustrating a lawful RTI request?
- Denying the RTI request instead of trying to re-activate the account?

Is it even possible to "re-activate" an account? It depends, I suppose.

Is there a settled professional view amongst us on the answers to these questions? An "official" email account remains under the control of the Crown throughout a change of government. A "private" email account remains within reach of laws and procedures governing conduct of official business only so long as the account user remains a minister unless the laws and procedures governing official records continue to be applicable after the minister leaves office. Should our recordkeeping laws and procedures govern the actions of ministers when dealing with "private" accounts while they remain in office and afterwards? There's plenty of meat here for recordkeepers to establish an abiding professional view and to urge that their view be accepted rather than allowing governments to give a knee-jerk response to each successive scandal as it arises. That professional view (if we had one) would support a case for all governments at all levels to follow the same protocols or explain why they are not adopting best practice recordkeeping. These questions are not the same technical matters that are covered in the r/keeping standards – they grow in a different part of the r/keeping garden. If we don't inform the public about best practice r/keeping who will?

These email "scandals" come up all the time. We should be able to state what the professional view is on these matters. The Premier has apparently "… ordered her director-general, Dave Stewart, to investigate private email use in her government, but [stated that] the probe would solely focus on Mr Bailey." Is that good enough? The use of email in her government is a systemic issue. If there are problems, and they seem to proliferate throughout all governments here and o'seas, how can an inquiry focussed solely on one case serve any purpose apart from an immediate political one?

Andrew Waugh:

<<I would be astonished if there was a consensus among record keepers about the private use of email. Personally, my views are simple: the focus on the 'private use of email' is misguided; it is confusing process with principle.

The underlying principle is simple: a record needs to exist of all official communications. One *process* that helps achieve this is to require all communication to go through official channels, facilitating capture. But focusing on this single process is misguided. It implies that if all email is sent through the official email system, then the problem is solved. Of course it is not solved. Even if an email is sent through the official email system, it can be deleted. And, of course, it doesn't cue people to think about capturing a record when using other forms of communication.

This ties neatly into my view of the culpability of the minister. In my view, the minister didn't sin by using an unofficial email system. He sinned by *deleting* the record. And he committed a mortal sin if he deleted the record after being notified that it was subject of an FOI request. And, yes, if this is correct, I think he should spend some time on the back bench - pour encourager les autres.>>

2017, March 8:

Andrew, I agree with all of that. Hence I did not add to my list of possible sack-able offences : failing to move emails into an "official" system.

2017, July 20:

<<Adrian Cunningham: State Archives in the news in Queensland.>>

2017, April 10: What is a public record?

An article last weekend in the Fairfax press by Elizabeth Farrelly, attacking the bruited sell-off of the NSW Land Titles Office (LTO), delineated some interesting fault lines for a discussion about the difference between "public record" and "public access". One way in which the difference might be defined is that -

- Public records are created expressly for the use and benefit of the community, whereas
- Public access is a right or permission to see and use (in whole or in part) records created for a different purpose, viz. to support and facilitate business.

Examples of the former would include LTO records, BDM (personal identity) records, company registration and disclosure documents, shareholder registries, etc. The concept of public record is well established in North America where the term record office often refers to a government department, not an archives as we understand the term but performing many of the same functions, at which such records are available to view (often on open-access shelving). Other registration and licencing records (e.g. patents, trademarks, copyright, motor vehicles, boats, pets, etc.) are arguably in the same category. The extension of general archiving arrangements to such "registration records" has always been problematic. Peter Scott used to argue that the National Library's "N" collection was a record series, not just a book collection - the prefix N before the Dewey number was used to indicate that it was the deposit copy under the Copyright Act, allowing for other copies of the same title, minus the N, to be available for general use – and Peter argued that the deposit collection was primarily a registration system, not a library function (not sure how calmly NLA would have entertained that view). A similar series existed in the Customs Library, being the banned books which were attachments to the files documenting the censorship process, and in the Patents Office Library which held the publications from other jurisdictions consulted and referred to when granting or denying Australian patents, copyright, and trademarks and providing evidence for the decision recorded in the file. The question raised (and vigorously argued) in Farrelly's piece is how far the making and keeping of such public records can or should be privatised. It is worthy of note that many private companies discharge their obligation to maintain a register of shareholders by employing the services of a commercial share registry.

Parallel issues arise in regard to the administration of public access – bearing in mind that public access rights and responsibilities apply outside the operations of government archival authorities and, in the case of some private company obligations, entirely outside the operations of any government agency. The archives of a government department would normally be subject to FOI long before they come within the operation of archives access policy (alas). Can the transfer of such records into the hands of an archives authority be regarded as a step in their formation as an Archive – one that changes them from being publicly accessible records into a public record? In other words, can the Archive formed by the archives authority (and into which the archives of each department is transferred) transmogrify the transferred material into a body of public records "created expressly for the use and benefit of the community". However much this might violate continuum theory, it fits comfortably into the life-cycle processes that underlie most of our existing archival arrangements (alas). The Archive formed by the archives authority need not, of course, be

a physical place – it can just as easily be a virtual regime. The question then might be : can the role of the archives authority (whether as the creator of a public record or as merely a vehicle for public access to old stuff) be privatised? It is worth noting that a discovery or court order would normally lie against the department of agency responsible rather than against the archives with which the document(s) is/are lodged.

I once over-heard a debate between British and Nth American colleagues over whether deposits in the Archives were still departmental records. The British view was that they remained departmental records and could be recalled and, in some respects, still managed as if they were still under the department's control whereas the Nth American view was that once transferred they ceased to be departmental records and could not be recalled. On the British view, what would be the difference between privatising archival services and utilising commercial secondary storage? I also wondered if the British archivist would have retained his composure if the current Attorney-General called for the trial records of Charles I.

Elizabeth Farrelly


Trial of Charles I

I haven't followed the LTO debate closely. The Farrelly argument (similar to other jeremiads I have read about that topic) is that commercial control of the operation and the data upon which it is based opens the door to corruption and unacceptable risks. I have assumed that the actual proposal is less draconian than it has been portrayed by opponents, that policy direction and performance standards remain in Government hands, and that the commercial operation would be regulated within limits imposed by public control. Leaving aside scepticism over governments' ability to set and sustain adequate safeguards, the parallel with the archival function would be a split between archives policy and archives operations (not unlike the one they ostensibly tried in NZ while I was there). In the ACT, as I understand it, policy and operations are in fact divided between the Archives Authority and the Departments. Conceptually, such a division has the advantage of cutting the umbilical cord between the scope of the Authority's responsibilities and the limits of the Repository. Leaving aside my own less-than-satisfactory experience of the NZ policy/provider split, I have long felt that separating the archives authority from its responsibilities for managing and servicing the stuff (regardless of whether or not a commercial operator is involved) offered the best way forward for public archiving in the 21st century. Perhaps "best way" is over-stating it; say rather the worst way except, to paraphrase WSC, for all of the others.

2017, April 21: Here we go again

From ABC News

Confidential hospital patient records found dumped in Sydney bin

Key points:

- The letters were found dumped in a bin in Ashfield last Tuesday

- They were follow-up letters to GPs from specialists at outpatient and cancer clinics at Royal North Shore, Gosford and Dubbo hospitals as well as six private providers
- They were supposed to be delivered by a private transcription company

More than 700 public patients and hundreds more in the private system have had their privacy breached after letters from their specialists to GPs were found dumped in a Sydney bin. The letters were turned over to police after being discovered by a resident in an Ashfield apartment block who was putting out the bins last week ... The correspondence dated from December and were meant to be sent out by a private transcription company, Global Transcription Services (GTS). Health Minister Brad Hazzard said a sub-contractor of GTS, who is believed to have dumped the documents instead of stuffing them into envelopes for delivery, was a woman who had significant health problems that had "impacted on her decision-making"... but an initial review suggested no public patients had been put at risk by the failure to send the letters ... This is the second privacy breach involving NSW Health documents that has come to light this year, after the ABC revealed patient records had been found in hospital carparks.

<< a sub-contractor of GTS >>

Hmmm. Looks like the out-sourcing was out-sourced. The assurance is that when r/keeping services are out-sourced, performance standards must be met. How does this work when the service provider then outsources to a sub-contractor? Who is accountable? The woman with significant health problems, GTS for employing her, or Brad Hazzard for not supervising the SLA better?

PS Full disclosure. I consult specialists at Gosford Hospital so I have an axe to grind here. How did unsent letters from Gosford & Dubbo end up in Ashfield?

PPS. ABC News is jazzing up its site in interesting ways. They have a "Good News" section now (what a mercy) and they're playing to their strengths in the bush with a "Rural" section also.

2017, June 10: Public records and the Comey notes

The president called Comey 'a leaker', but is there any legal case against him?

<<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 24: Minister under investigation by Qld State Archives

ABC Report: "Minister under investigation by Qld State Archives"

RECORDKEEPING: HIT AND MISS

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.

Mark Bailey

WA SRC (2015-2016)

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>>

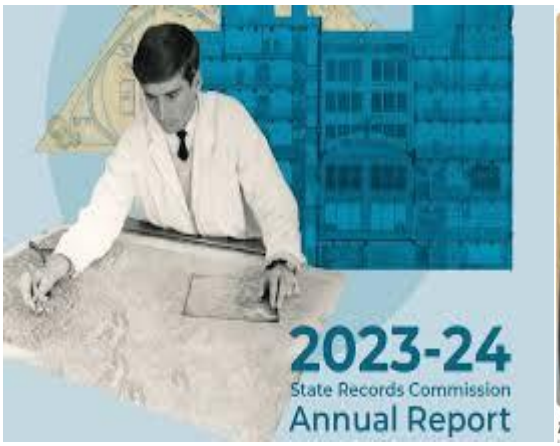
We only need squabble over the meaning and effectiveness of the legislation if we are agreed about what purpose the regulatory provisions (such as they are) is intended to achieve. Is it to punish malefactors or to improve r/keeping? Investigate + prosecute feeds into a model where action is taken after 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?

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

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 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.

2017, October 9 : 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 42ealized4242ati of the QSA. The QSA has not provided any such 42ealized4242ati ... 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

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 ....

RECORDKEEPING: HIT AND MISS

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: Breath-taking cont'd

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.

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 approach 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:

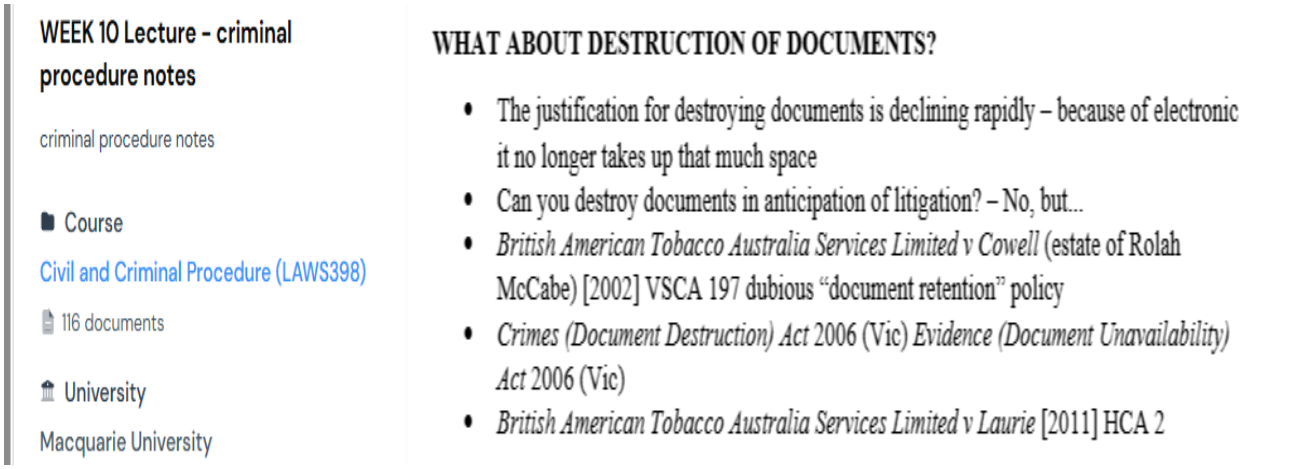
<<Andrew Waugh: I agree that making it a crime to destroy records is a dead letter. It's never prosecuted, so it's not a deterrent. Personally, I would look at ensuring that destroying records has consequences for the government. Not administrative consequences, or consequences for the person that ostensibly 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.

To give a specific tintack example. In the Windrush case, the courts would be required to assume that a landing card existed for the individual concerned because the agency had destroyed the records. Note that I'm not making any distinction between the situations where the agency didn't create the records in the first place, can't find them (due to poor management), or actively destroyed them.

Yes, this would be forcing government to fight with one hand tied behind its back. But it would be a position that, due to poor recordkeeping, they placed themselves in. If the government started losing cases because they lacked the records to defend themselves, I think that there might be a renewed attention to the importance of creation, management, and destruction of records.

You could make it a defence that the records were destroyed legally (i.e. under a disposal authority). On the other hand, you might not; as the government has taken on itself to decide when their records can be destroyed, it should carry the can if it later turns out the records were actually important. Amusingly, I am sure this law would be electorally popular. Most people can identify with being in an adversarial position to the government and would be in favor of things that tilted the scales in their favour. ...>>



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 authorised 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 … 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?>>

2018, 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…>>

> **Soft copies yes** 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.

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.

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**
> (1) Subject to this Part, a person must not engage in conduct that results in:
> (a) the destruction or other disposal of a Commonwealth record; or …
> I damage to or alteration of a Commonwealth record.
> (2) Subsection (1) does not apply to anything done: …
> (c) 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)(c) – 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)(c) 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) –

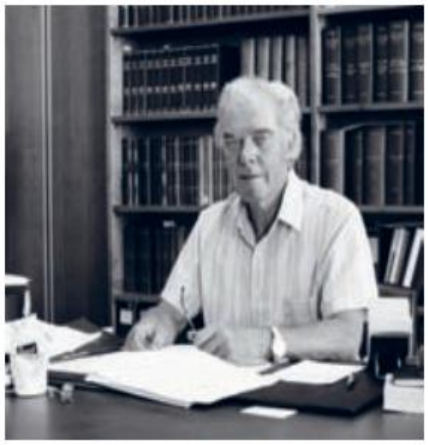
> 24 (2) Subsection (1) does not apply to anything done:...
> (b) with the permission of the Archives or in accordance with a practice or procedure approved by the Archives;

But "normal administrative practice" is the phrase used in connection with dis-approvals under 24(2)(c) 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)(c) – **the power to disapprove** of a practice NAA thinks should be outlawed.

Endorsement by CAARA notwithstanding, 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.

The Birth of the NAP



Returning to OPC as a consultant drafter after he retired in 1977, Charles Comans was able to focus on drafting without worrying about running the Office. Administrative Building 1980. [OPC photograph]

The Administrative Building, King Edward Terrace, Parkes, ACT. Home to the Attorney-General's Depa from 1956 to 1983, the building was later renamed the John Gorton Building. [Photograph courtesy of the National Library of Australia]

Long-term personal secretary to First Parliamentary Counsel, Sylvia Sheldon. Administrative Building 1980. [OPC photograph]

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:

<<Joanna Sassoon: I'm very sorry that your thinking and drafting amendments to the clauses of the draft Act were not kept ... More than once I have been told when asking about gaps in a series that it was 'the girl in the office' who destroyed the records. But I have always assumed that it is the men in the office who instruct 'the girl' to destroy the records, thereby providing the perfect alibi should anyone ask ...>>

<<Adrian Cunninham: ... the problem with NAP is that, technically, what the Secretary did under NAP is absolutely legal. That is because such a practice has never been disapproved of by the NAA ... As Chris says, it is up to the NAA to exercise its NAP power under the Act to disallow such practices in the future. It will be interesting to see if it does so.

While I said earlier that formal NAP advice is necessarily vague, in fact as long as it is expressed in the negative it can be highly specific. The NAA could issue formal advice listing various practices it disallows under the rubric of NAP. What the NAA cannot do is issue advice saying what practices it does approve of under NAP. Humans with a tendency to do the wrong thing, being ever inventive, would then be challenged to come up with new and ever more creative practices under NAP and wait and see if the NAA plays catch up by then disallowing them. The only constraint there would be that those wishing to push the boundaries of NAP would need to check that the records they were getting rid of are not covered by an existing formal disposal authorisation in a records authority signed off by the NAA.

Whether any of these practices survive the 'pub test' is another question entirely. The court of public opinion applies its own criteria and logic - providing of course that the actions of the officials in question have made it into the public domain. An awful lot of NAPing is done under the veil of secrecy, with neither the NAA nor the pub patrons ever knowing about it. And if you don't know about it, how can you disapprove of it?>>

<<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:

<<Deb Leigo: ... I am wondering what the sentencing and disposal environment would look like if the NAP provisions are removed. How would this work? Most of my work is in sentencing and disposal of physical records. Earlier this year I commenced a sentencing and disposal project at a public school. The volume of paper destroyed was 50-50 NAP and expired temporary records.

Would the removal of the NAP provision just mean that everything would be included in the disposal authority and require authorisation? What about duplicates, computer printouts for verification, rough meeting notes (from which formal minutes

were created) and reference materials – 90% of the above mentioned NAP fell into these categories. Would there be better clarification of what is an 'official record' and what records must be created? I tend to err on the side of caution, so always maintain and provide to my employer/client a list of items I have destroyed under NAP – whether they keep it or not is up to them, but I retain a copy, just in case …

Another issue is the length of time that many items are retained before being NAPed – on my experience several many decades. In my view, the best person determine and undertake NAP is the person who created/captured/used the records, unfortunately this is also perhaps the most likely person to abuse the NAP provisions. Often it is difficult or too time consuming to determine if the originals of the duplicates I see have been retained or are accessible, so I cannot NAP them, the same with rough meeting notes.

I would like to see the requirement to created official records in the Act, just as I would like to see more records creators and users learning and understanding the NAP provisions AND acting on them appropriately – perhaps I am dreaming of a utopian world …>>

<<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".

RECORDKEEPING: HIT AND MISS

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.

<<Michael Piggott: I've had this weird dream where the CEO of NSW Museums Archives and Records is sketching (on an electronic whiteboard) for the Premier's chief of staff the finer points of creative recordkeeping and the meaning of "nap". >>

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 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.

Dockets

Registers

Index

> 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

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

(c) 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)(c) 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.

RECORDKEEPING: HIT AND MISS

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.>>

RECORDKEEPING: HIT AND MISS

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 State Archives investigates Premier's Office …

<<Adrian Cunningham: 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 …

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.

… but that wasn't the end of it

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….>>

2020, November 11: What the data proves (and doesn't) …

Show me the proof

> The independent senator Rex Patrick has questioned how Services Australia calculates welfare debts and called on the government to fund a federal court test case to examine the agency's methods … His call comes after the Administrative Appeals Tribunal (AAT) found a $1,600 debt issued to one of Patrick's constituents had "not been proved" … The federal government is facing a class action over the robodebt program, which averaged out annual tax office pay information to allege welfare recipients had been overpaid on a fortnightly basis. After admitting the practice was unlawful, the government agreed to repay $721m and said it would issue debts only after it had gathered sufficient "proof points" to substantiate the overpayment. However, the agency has not clarified which "additional proof points" – such as payslips or bank statements – could justify a debt, including the more than 180,000 debts it has declined to refund …
>
> Under social security rules, welfare recipients are required to report their employment income on a fortnightly basis to ensure they are not overpaid benefits. At issue is that in some cases the payslips relied on by Services Australia to subsequently calculate debts do not align with the agency's fortnightly income reporting periods. Further, beneficiaries are required to report their income when it is "earned", rather than paid to them. In some cases, it is said the agency will use an average to match the income on the person's payslips to Centrelink reporting periods. It is argued this process could lead to inaccurate or unproven debts, if averaged income was attributed to the wrong fortnight. It would be most likely to affect casual workers with very "lumpy" income and particularly those engaged as contractors and paid irregularly or belatedly for past work.
>
> "In principle, the idea is, you can't just raise a debt, you have to be able to prove the debt," Patrick told Senate estimates last month …

RECORDKEEPING: HIT AND MISS

Whoops!

> The head of the National Broadband Network has blamed poor address records for having to spend an extra $600 million to complete the rollout. The organisation celebrated finishing the initial build by the Government's deadline of July, but has discovered an extra 300,000 homes and business that still require connection. Chief executive Stephen Rue told a Senate hearing on Monday evening that money for the new connections would come from additional funds the organisation has borrowed. "As we got to the end of the build, we found there were more premises to build to than the data showed. Believe it or not, there actually wasn't a database of all the premises in Australia," he told Labor senator Kimberley Kitching. "We relied on historic databases, which we imported." ...
>
> Mr Rue said NBN Co received data from Telstra as part of the historic agreement signed in 2011, as well as from data provider PSMA. PSMA Australia CEO Dan Paull said criticism of his organisation's data was unfair, as it was not designed to be a list of premises. "[The dataset] is an index of Australian addresses. The dataset does not contain a list of premises," he said ...

2020, November 17: Trump, records and the Presidential Records Act

<<Andrew Waugh: Excellent long article in the New Yorker about Trump's attitude to recordkeeping, his insistence on non-disclosure agreements, and deliberate destruction of records in contravention of the PRA. The article includes a summary of the history of Presidential recordkeeping and how NARA has tried to protect such records.>>

Now, here's a question. Does anyone care but us whose trade this is? A few political insiders perhaps who want the documentary basis for their work to be regulated, some journalists in search of a gotcha moment or good copy, the public when titillated momentarily by scandals involving records and politicians, and some historians and scholars (fewer perhaps than we sometimes imagine) who care about the integrity of political and historical discourse. Was any public (non-specialist) interest shown in the recent (apparently unsuccessful) fight to preserve the integrity of State Records NSW in which we couldn't even rely on a world-leading authority on recordkeeping to uphold the right? In short, who cares? Who even understands? And what does that mean for our future?

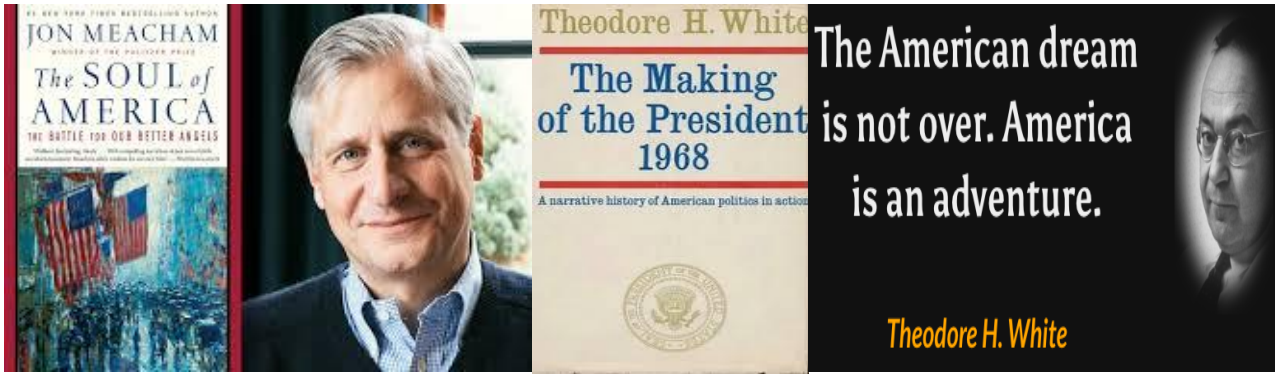
Thumping Trump is part of the narrative that post-Trump we may have a shot at getting back to "normal". This is not unlike the wishful thinking that post-Covid we'll snap back to the way things were. In my world view, things are never the way they were (and, as the old joke has it, they never were the way they were). We've been trying for a long time to plant in the public mind that routine good recordkeeping is an important bolster for good governance (corporate and political). We've not had a lot of success but I'm open to the argument that our audience is opinion-makers and influencers rather than the "general". If we now aspire to resume that work in a post-Trump era, it behooves us to take a realistic view on what that era will look like.

First question: Politically incorrect idea. Is this (was it always) a Western Liberal concern? Do Asian, African, and Middle Eastern societies share it? Is the situation uniform in Western Liberal space (excluding Russia, I suppose)? There are obvious differences, but the US is important because of its dominance (for the moment) of the Western Liberal space. But populism (for want of a better word) has infected most of us. I have long thought that Hanson-ism is our version of Trump-ism.

Second question: How much of a problem is it? I've seen research that about 50% of those who voted for Trump are bolted on Trump-supporters (probably Tea Party sympathisers) while the other 50% support the Republican Party rather than Trump. Since he got just under 50% of the vote, that suggests that 25% of the American electorate is part of a populist uprising. You can reach more-or-less the same conclusion about the UK over the Brexit vote (erroneously said to "prove" the British wanted to leave): When you do the math, the result

is that more-or-less 30% voted to leave, 30% to stay, and 30% were too lazy or indifferent to vote at all.

On this reasoning, we are now in a situation in which up to a third of the "general" public are wedded to populism. Are they likely to care about recordkeeping? The question is moot, of course, if history suggests that the "general" public – whatever its composition – don't care anyway. Although I don't share Biden's hopes that we have a shot at getting back to the way things were, I think we should continue to struggle for our cause and that means we have to be aware of the changing landscape in which we operate.



I have recently read two interpretations of what has been happening in the US. Jon Meacham argues that today's populist uprising is just another example of furies that have arisen from time to time in the US and that (like those) it will subside. This is a kind of comforting, cyclical interpretation suggesting that snap-back will occur. But Meacham's analysis is more subtle than that: he goes on to argue that these periodic outbursts derive from abiding fault lines in American society going back to colonial times. Theodore H White, writing in *Making of the President 1968*, seems to be arguing that it was in that year that the US passed a watershed moment that fractured the US body politic, arguably forever. He puts it down to three things: loss of faith in government attendant on Vietnam, the LA Watts riots of 1965, and the Chicago riots at the Democratic Convention. This implies a linear view focusing on a point in time at which the voiceless began to be alienated. He writes:

> For Americans, a time of rethinking had begun [after the Tet Offensive]. Had the government deceived its people? Or had the government deceived itself? And, in either case, whom could one trust? … For months the White House had known of a coming crisis in South Vietnam … The President had secretly acted on this information [but] All through the fall … a series of happy stories was told … Were there no outside world, if America inhabited a satellite planet, capable of controlling its own environment … Lyndon Johnson might conceivably have gone down as the greatest of twentieth-century Presidents. But … one of the cardinal duties of the President is to educate, not only himself, but his people … He must understand not only the history of his own people as they change, but the history of other peoples as they too, change about us. A President can trust no one and no theology except his own sense of history; all instruments of government must be subordinate to this feeling of his for history; and when this supreme guidance is lacking, the instruments themselves are useless … by the beginning of the year 1968 the instruments of American government had failed American purpose as never before …
>
> [After Watts] Americans, black and white, would search for new terms of partnership … but underlying all such phrases … was the new recognition of rage, of hate, of fear, of barbarisms that might tear America itself apart … It is impossible to understand any of the domestic politics of the United States … without understanding how deeply, beneath surface euphemisms, goes the cleavage of race … It was to be a long time before Americans realised that these were not just episodes of the day … but … cleavage lines that would split all Americans apart …
>
> In 1965, and for the next three years, the gusts of history that swept through America were to stir and shake every value that middle-class Protestant America had cherished for

> centuries ... Somewhere out beyond the Alleghenies the old culture of America still persists [but] a new culture ... the child of prosperity and the past decade ... defines itself best not by what it seeks but by its contempt and scorn of what the past has taught ... the critical difference between the two cultures is that the new culture dominates the heights of national communications ... and thus stains, increasingly, the prisms of reporting through which the nation as a whole must see itself ...

Those who take a partisan view of the current US situation (it's all the fault of Nixon, Reagan, Bush 2, and Trump) forget that it was Clinton who arguably took the decisive step in launching the GFC by repealing the Glass-Steagall Act and Obama who (having promised to visit retribution on those responsible for the GFC) forgave them and appointed many of them to positions of power in his administration to help reform Wall Street.

It has been argued that it was the GFC that was responsible above all else for the rise of Tea Party populism. That and the hollowing out of the American middle class (Meacham quotes a statistic showing that the income level needed to support an American middle-class lifestyle, comparable to what it was in the 50s and 60s is now twice the actual average income in the US). Not forgetting that it has been the parallel hollowing out of middle management (those primarily responsible for recordkeeping) that has brought us to where we are now, cherishing the forlorn hope that technology will make up for the void.

These are not transitory problems, they are abiding features of the world in which we now live and in which we must promote, if we can, the recordkeeping enterprise. If you think Biden's hope for snap-back (however laudable) is realistic, read what Stan Grant has to say-

> ... don't think for a minute Trump is an aberration — or that he invented the lie. America's lies are baked in ... it didn't begin with Trump. The US was born with the power lie, with the invasion and genocide of First Nations people, the enslavement of Africans on whose scarred backs America built its economy ....
>
> Barack Obama ran a "remote killing" operation using drones to target terrorists. But he went much further than that, ordering strikes in countries like Pakistan outside declared war zones. His drone strikes killed many innocent people. Obama used state-secrets privilege to keep the attacks classified and away from public scrutiny. American media outlets like the New York Times and The Atlantic gained access to material that revealed Obama's complicity and secrecy and that the Obama administration lied about the death tolls ...
>
> Donald Trump has lied like so many American presidents before him; his handling of the coronavirus shows that, just like with other leaders, his lies cost lives. America has survived its worst presidents and its history of lies. In spite of it all it has been a remarkable country. Its promise of hope has lured people from all around the world, chasing their dreams. Yet today that hope looks more like another lie.
>
> President-elect Joe Biden is peddling his own myth about a land of "possibilities" that tens of millions of Americans gave up on a long time ago. Economists Anne Case and Angus Deaton chronicle this downward spiral in their book, Deaths of Despair. It is devastating portrait of a lost generation; an America of 'haves-and-have-nots', where a four-year college degree is not just the difference between career prospects but between life and death. This is an America of meaningless or no work, declining wages and shattered families. Harvard University philosopher Michael Sandel reveals in his latest book a country in which the rich get richer and the poor stay where they are. The richest one per cent, Sandel points out, earn more than the bottom half combined. If you're born poor, you likely stay poor. Of those in the bottom fifth of the income scale, Sandel says, "only about one in 20 will make it to the top fifth". But Biden and Kamala Harris say you can make it if you try.
>
> Harris points to her black, Indian and immigrant background — she will become the first female vice-president — as proof of the American Dream. But Harris is the daughter of solidly middle-class parents who are university academics. She never had to "make it". Now Harris's husband Doug Emhoff — a wealthy partner in a prestigious law firm — is reportedly in line for a White House job. Just like Trump's family, just like the Clintons, the Bushes and the Obamas: more power and privilege passed around like presents under a Christmas tree. Little wonder so many Americans see Washington politics as a racket that serves the wealthy.

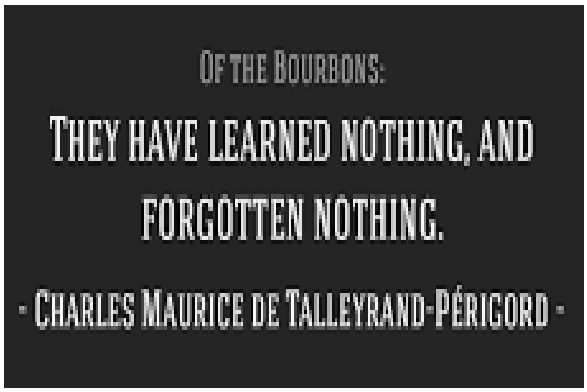
> The poor and left-behind are not fooled. Americans know too well the lies their presidents tell while they have to live with the devastating, sad truth of their own lives.

2020, November 19:

> "… a new culture … the child of prosperity and the past decade … defines itself best not by what it seeks but by its contempt and scorn of what the past has taught … the critical difference between the two cultures is that the new culture dominates the heights of national communications…and thus stains, increasingly, the prisms of reporting through which the nation as a whole must see itself …" (T H White)

But not for long. Fox News and Donald Trump gave the old culture back its voice, said for them what they'd been unable to articulate for themselves – hadn't dared to articulate in the face of the contempt and the scorn. In short, Fox and Trump gave them back their freedom, and people thus liberated won't give that up easily. Why should they? And in the process a great divide opened when the Right sought to enlist the reanimated old culture and then became its prisoner.

I agree with Jan-Werner Muller that the divide is unlikely to go away (but not for the reason given – viz. that polarization is confected, not real). What has been lost (or, at least, severely damaged) is the habit and norms of cultural and social discourse. And they have been lost in reality not in imagination. We cannot understand the divide (here as well as in America and, I suspect, throughout the Western Liberal world) if we fail to understand that it is not a right-wing plot or a passing frost but a thing that stems as much from the contempt and the scorn White identifies as from the stridency of the reaction to that. Even now, that reaction is being fed by the Left's tolerance for riots and excess in the name of BLM and their intolerant suppression of ideas and speech and behaviour in the name of ideological purity. The returning Democrats, some of them, believing themselves triumphant are behaving like the returning Bourbons, having learned nothing and forgotten nothing.



I am finding it increasingly difficult to believe that the values that (I think) underscore the recordkeeping gospel (and the archival mission for that matter) are in fact accepted by the society in which we preach that gospel – are, in fact, accepted by many recordkeepers themselves anymore.

- The old culture has come to believe (if Stan Grant is correct) that government and corporations are a "racket" and there are some grounds for thinking they are right. Why should they believe recordkeeping can keep the racket honest?
- The new culture may pay lip service to integrity, fairness, and freedom but understands those things through an ideological prism as outcomes rather than values (shades of Jordan Peterson – remember him? The man too dangerous to be heard). Why should they believe that recordkeeping is anything but a tool to forward an agenda?

In our confused cultural landscape, the traditional recordkeeping message seems to have the best chance of success as part of a values-based approach to governance (corporate and

political) – the way things were (or the way we like to think they were). But that seems increasingly unattainable (unless Meacham is correct and this too will pass of its own accord). Joe Biden wants things to get back to normal. So, what would I do to help him bring this about? I would ask how we strayed from normal. I would ask how we can get back. But I'm Bethmann-Holweg on this, I'm afraid. When asked how WW1 came about, he is said to have replied: "*Ah! Well. If only one knew ….*"

PS. My only comfort is that our divide here in Oz doesn't seem to be as deep as elsewhere. But perhaps I delude myself.

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?

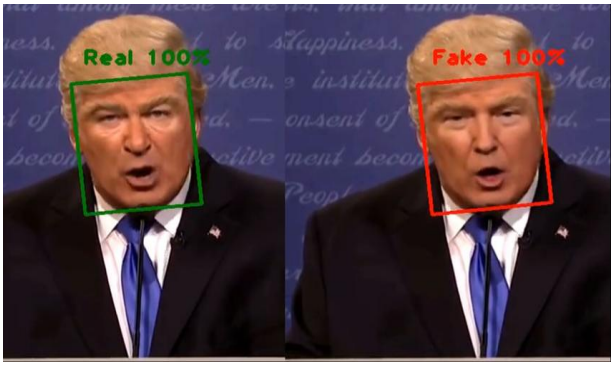
Does the status and authenticity change if the tweets are (were) harvested – e.g. by NARA, LC, or an outfit like the National Security Archive? Would a statutory mandate requiring or authorising a harvester to download and preserve them change things? Does there have to be a formal connection between 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 10:

<<Michael Piggott: A further dimension to this thread concerning potential legal evidence, not unexpected, has been reported earlier today by ABC News

> On Saturday US senator Mark Warner, a Democrat who is the incoming chairman of the Senate Intelligence Committee, urged mobile carriers to keep content and associated metadata connected to the riot, which erupted as lawmakers gathered to certify the victory of president-elect Joe Biden. Mr Warner, in letters to the companies, emphasised how the rioters took the time to document the event and posted them via social media and text messages "to celebrate their disdain for our democratic process". A photograph of Adam Christian Johnson smiling and waving as he carried off Ms Pelosi's lectern from the House of Representatives chambers went viral. ..... Mr Johnson, of Parrish, Florida, also streamed live video of himself on Facebook as he walked the halls of the Capitol, according to the Tampa Bay Times. The video was removed from online platforms and all of his pages have been taken down. A photograph of Adam Christian Johnson smiling and waving as he carried off Ms Pelosi's lectern from the House of Representatives chambers went viral. ..... Mr Johnson, of Parrish, Florida, also streamed live video of himself on Facebook as he walked the halls of the

Capitol, according to the Tampa Bay Times. The video was removed from online platforms and all of his pages have been taken down.>>

2021, January 11:

<<Andrew Waugh: A recent tweet from NARA ... The National Archives will receive, preserve, and provide access to all official Trump Administration social media content, including deleted posts from @realDonaldTrump and @POTUS. Read more ...>>

2021, January 14:

<<Adrian Cunningham: Trump's prolific Twitter record lives on - article in The Conversation ...>>

<<Andrew Waugh: One of the interesting points made in the article is that, while the tweets have been preserved, they have been removed from their context. This, of course, means that it is impossible to understand individual tweets in the context of what they are responding to, and what the response to them was. But removing them from the source system has other effects:

- **It is impossible (or merely difficult?) to understand the context of other tweets, still in twitter. These can still be found, but the Trump tweet they are responding to (or being responded to) is blank.**
- **The tweets have been included in many, many, other contexts (e.g. news articles). Depending on how this was done, the article may still contain the original text (but perhaps not the image), or it might be completely blank.>>**

2021, January 18:

<<Matthew Pengilly: Amateur and fairly inexperienced record keeper here, so please forgive the simpleness of my understanding and questions:

- **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)?**
- **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?**
- **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.>>**

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.

RECORDKEEPING: HIT AND MISS

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????

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" … >>

RECORDKEEPING: HIT AND MISS

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.

2022, August 21: **G-G kept no record of swearing in Morrison ...**

<<Mark Brogan: Readers of this list are no doubt following the intrigue surrounding Scott Morrison's secret ministerial commissions during the term of the Morrison Government. Over the past few days, attention has turned to recordkeeping and the 'omission' of any reference to these secret commissions in Governor General, David Hurley's, diary.>>

Scott Morrison

David Hurley

2022 August 22: Lots of juice in this one.

What is the "diary" referred to?

There is an online "program" but it is hardly a diary – just a list of meetings and events, more like a journal, I'd say, than logs, war diaries, etc. and a world away from personal diaries and narratives. I would be doubtful that there isn't a more complete record of comings and goings, conversations and exchanges, and (most importantly) actions (including swearing and removal of ministerial commissions). The "program" is for public access but that is not to say that a more complete official record was not kept. The journalists are pointing to what has been made public but that hardly justifies the headline that no record was kept.

So, the issue they should be focussed on is whether some at least of the G-G's actions (such as the swearing in of ministers) **should** be made public – more-or-less at once, I suppose. That, I imagine, is an issue that any inquiry would need to look at. The question that would arise would be whether there are any circumstances in which secret or undisclosed meetings, conversations, exchanges, etc. could take place and, if so, should a record be kept anyway even if not disclosed immediately.

The same issue arises in respect of ministers, agency heads, and (perhaps even more importantly) ministerial advisers. With a few exceptions. you can safely disclose what was done w/o disclosing the nature of what took place however much secrecy hounds like Morrison and Obama dislike it.

PS. Purely as a curiosity: what is the process for withdrawing a prime minister's commission or the ministerial commission of any other minister (secret or otherwise)? There is an online example (Julia Gillard's letter resigning as PM and recommending Kevin Rudd's appointment following the 2013 counter-coup). Reading the runes, that letter suggests that it would have been customary for Gillard to resign on her own behalf and on behalf of her entire ministry but she states explicitly that she does not do so because "Mr Rudd may wish current Ministers to remain in office." This suggests that Morrison may have had to send a similar letter following the recent election result resigning his commission and those of his ministers when recommending the appointment of Anthony Albanese in his place. Would such a letter have had to stipulate that he was resigning from his "secret ministerial appointments" as well. If so, where is that letter and what does it say?

PPS. Taking that line of speculation, a step further, would there have had to be a letter advising the G-G to appoint Morrison to his "secret ministerial appointments" in the first place? If so, where is that letter and what does it say?

.....

A spokesman for the Official Secretary has made a statement:

> A spokesman for the Office of the Official Secretary to the Governor General told *7.30*: "There is a difference between the Governor-General swearing in a minister to hold office and approving an existing minister to administer a department ... The instances in question are examples of the latter."

So far as the paperwork is concerned, this appears to be a distinction without a difference. Whether it involves appointing a minister or conferring administration of a minister's powers, it beggars belief to suppose that the G-G's approval would not be obtained (and subsequently withdrawn) on the basis of written advice tendered with reasons. If such matters are settled on the basis of a handshake (if not with a wink and a nod) maybe it is time to abolish the G-G's Official Secretary and institute more mature procedures.

The meticulous annotation as to time received on the Rudd letter in the correspondence, I referred to above suggests that there must have been procedures for documenting these approvals. You can't do things of high import and then be unable afterwards to say when, how, and why. It is relevant to ask what reasons were given to the G-G and alarming if there were none. Barnaby Joyce is suggesting that constitutional propriety doesn't matter to

ordinary folk standing at an IGA checkout. The checkout metaphor puts me in mind of Horace Rumpole's complaints about his wife's expenditure on Vim (a cleaning agent). "You'd miss it if it wasn't there, Rumpole," Hilda replies. You could say the same about a lot of other things, constitutional propriety among them, that we take for granted and don't think much about until they're gone.

2022, August 23:

<<Mark Brogan: ... the Solicitor General's (SG) opinion on the validity of Morrison secret ministerial 'commissions' brings no joy on the matter of what documentary evidence exists in PMC or the Office of GG that describes:

- ***Morrison's justification to the GG of why his ghost 'commissions' were required.**
- ***Why these 'commissions' needed to remain secret and not be revealed in the usual way.**
- ***How the ghost 'commissions' and associated secrecy were reconciled with the norms and conventions of individual and collective minister responsibility; and**
- ***What questions, if any, were asked by the GG and the responses provided by Morrison or PMC.**

... The SG seems to have found these matters out of scope and/or impossible to pursue. On the matter of secrecy and not following the usual practice of publishing these ministerial appointments he remarks:

> **"I have not been briefed with any information concerning whether the lack of any notification was the result of a direction from Mr Morrison, or for some other reason." (p.2)**

The Opinion unreservedly concludes that the appointments were valid, but troubling in their implications for Westminster democracy since "it is impossible for Parliament and the public to hold Ministers accountable for the proper administration of particular departments if the identity of the Ministers who have been appointed to administer those departments is not publicised." (p.4)

Later in the opinion he concludes, using the case of Department of Industry, Science, Energy and Resources (DISER), that the appointments were inconsistent with the principle of responsible government that is inherent in Chapter II of the constitution.

As a consequence of the opinion we now know that there was no swearing in of Morrison in his new ministerial roles, but that the appointments were made using Instruments of Appointment authorised in Executive Council, that appointed Morrison to administer the Department of Industry, Science, Energy and Resources and each of the other four Departments. The SG found that notification of an appointment is not a condition of validity:

> **"I am instructed that, after the Instrument of Appointment was executed, no action was taken by the Department of the Prime Minister and Cabinet to announce that appointment, the Instrument of Appointment was not published, no change was made to the Ministry list which is tabled in Parliament, and no gazettal was pursued. Further, I understand from media reporting that the other Ministers administering DISER (and presumably DISER itself) remained unaware of the appointment for at least some months after it occurred.**
>
> **The above facts do not cast any doubt on the validity of Mr Morrison's appointment to administer DISER. Section 64 does not prescribe any procedures or mechanisms for giving effect to appointments. As a result, the appointment could be invalid only if there is an implicit condition that the valid exercise of the power to appoint an officer to administer a department of State depends on subsequent publication of the appointment. In my opinion, there is no such implicit condition." (p11)**

Elsewhere today, in an article published in Crikey attributed to David Hardaker, we are informed that secrecy is a way of life in the vice regal office and we should not expect too much by way of explanation actions or decisions made by the GG.

In 2013, a High Court judgement ruled that documents relating to the governor-general's "substantive powers and functions" were excluded from disclosure by operation of s 6A(1) of the FOI Act.

So where does that leave us? Why, with the Archives Act of course 21 years from now (or longer if you are a pessimist about such things). Is it time to dust off and re-invigorate Anne Twomey for a new mission and to engage David Fricker's successor in the blood sport of vice regal recordkeeping?>>

2022, August 26:

<<Mark Brogan: Today, the Prime Minister, the Hon Anthony Albanese and the Attorney-General, Mark Dreyfus QC , jointly announced the appointment of the Hon Virginia Bell AC to lead an Inquiry into the appointment of the former Prime Minister, the Hon Scott Morrison MP to multiple ministries. Virginia Bell is a former High Court judge. The full terms of reference of the Inquiry are available ... The Inquiry is scheduled to report on 25 November, 2022.>>

2023 July 7: More from Robodebt RC

<<Andrew Waugh: Recommendation 23.8: Documenting decisions and discussions The Australian Public Service Commission should develop standards for documenting important decisions and discussions, and the delivery of training on those standards.>>

2023, July 8:

Better recordkeeping can't overcome the flaws (subservience rather than free and frank advice) in public service culture discovered here, flaws that have developed over many years. But this we already knew. Poor public policy comes from demanding data that gives you the result you want rather than the one you need. You can run that template over almost all our politics now. Regrettably, for the public service going along and not properly documenting politically unwelcome information, not simply poor r/keeping, is the heart of the problem. I'm old enough to know from personal experience that it was not always thus. It was never perfect, far from it, but I have seen it get worse in my lifetime. And this ethical failure is not confined to the public sector (as the Banking RC showed).

> ... public servants giving evidence to the commission have faced claims of dishonesty, "reconstructing" events and deliberately withholding relevant documents. The commissioner, the former Queensland supreme court chief justice Catherine Holmes SC, will have to consider whether ... public servants were "recklessly indifferent" given the countless legal warnings they received. Reckless indifference is a key feature of the civil tort of misfeasance in public office ... the robodebt scheme had been implemented not because internal lawyers got a legal question wrong, but because their advice had been flagrantly

> ignored … Officials told the royal commission of a culture of fear and pressure … The senior counsel assisting the commission, Justin Greggery KC, suggested Morrison's signal to the department may have been so strong as to revive what might otherwise have been a dead budget proposal … [one witness] essentially broke down under questioning, dramatically conceding … she had breached the public service code of conduct because she "lacked courage" …

2023, July 9:

A not unrelated issue is the hollowing out of the public service and its replacement by consultants and external providers. They now account (apparently) for 37% of C'wealth government "employment". Labor is promising reform; we shall see. Like the ambiguous position of advisers, the r/keeping responsibilities of these external players, with regard to public accountability, appear to be murky.

> … The federal government released the findings of the Australian public service audit of employment on Saturday, which examined the hiring practices and associated costs of 112 public service agencies, excluding the CSIRO, Australian Broadcasting Corporation, and parliamentary departments. It found the equivalent of nearly 54,000 full-time staff were employed as consultants or service providers for the federal government during the 2021-2022 financial year – the equivalent of 37% of the 144,300-employee public service. The audit also found outsourced service providers made up nearly 70% of the $20.8bn total spending on external labour, while more than a quarter of it went to contractors and consultants … … Katy Gallagher, minister for the public service, said the outcome of the audit showed the former Coalition government was "plugging gaps" in the public services with their "arbitrary cap on the number of government employees", and creating a "shadow workforce" …

In light of the revelations about failures in public service integrity in Robodebt, I would be more reassured if Labor focussed on that rather than the concerns of the CPSU.

> … "Labor is committed to rebuilding the APS, its capability and ensuring that jobs that need to be done are delivered, where appropriate, by public servants." … In 2021, the Community and Public Sector Union told a senate inquiry into the capability of the public service that labour hire and external contracting was used for day-to-day public service work due to government policies meaning agencies were unable to directly employ staff. Labor promised during last year's federal election campaign to abolish the staffing cap on the public service and conduct the audit of employment if it won government, with the view to reducing government reliance on labour-hire or external contractors. The policy has been long-held by the party …

Consultants are essentially unregulated. We rely upon them to say when there is a conflict of interest. Who decides what is a conflict of interest? They do.

2023, July 21:

<< A not unrelated issue is the hollowing out of the public service and its replacement by consultants and external providers … Labor is promising reform; we shall see. Like the ambiguous position of advisers, the r/keeping responsibilities of these external players, with regard to public accountability, appear to be murky>>

From *The Conversation* (21 July, 2023)

> This week the Albanese government produced a detailed breakdown of the A$3 billion it plans to save over four years by cutting the use of outsourced labour and consultants … There's nothing wrong with moderate use of consultants and contract labour. It's been done by both sides of politics for decades … The concern is the extent to which core public service functions – policy advice to ministers and delivery of welfare programs – have also been outsourced … It is true that the public service does not always live up to its legislated standards, as has been found to have been the case with Robodebt. But it can be held accountable when it fails. Accountability mechanisms for private consultants and contractors are weak by comparison, with failings often obscured by a veil of "commercial in confidence".

RECORDKEEPING: HIT AND MISS

In *The Conversation* in June, Richard Mulgan expertly analysed the findings of the audit of employment Labor commissioned shortly after taking office. He listed three reasons why public servants like using consultants:

- they allow governments to bury advice they don't like.
- they help persuade ministers who distrust the public service. This is especially important with Coalition ministers.
- they maintain a revolving door for public servants to leave their job, collect their super and continue working on the same issues.

There is a fourth, more venal, reason – the millions of dollars consultants spend each year entertaining public servants …

2023, July 22:

<< Accountability mechanisms for private consultants and contractors are weak by comparison, with failings often obscured by a veil of "commercial in confidence">>

Further to this – there were two good pieces in last week's *SMH News Review*.

Tony Harris (former NSW Auditor-General)

To be frank, our public service is far from fearless: … Commissioner Catherine Holmes' royal commission report found that the conditions that led to robo-debt applied to several agencies, not only Services Australia … the APS Commission neglected its very purpose by not identifying how the disempowering of the public service had undermined its ability to tell ministers that robo-debt was unlawful. Indeed, you won't find the word robo-debt in its reports, but you will be told, in every report, that the Commonwealth public service is characterised by high integrity. Similarly, you won't find in its reports a study of "sports rorts" … And the APS Commission did not mention the 2018 Moss Review, which found the Agriculture Department fraudulently altered veterinarian assessments to avoid its legal responsibility to report abuse in the export of live sheep …

These are not the only examples of APS Commission negligence. Though past public service commissioners, including Andrew Podger and Peter Shergold, have frequently written and spoken of serious limitations on the ability of Commonwealth public servants to provide frank and fearless advice, recent State of the Service reports have ignored the issue. And we have seen this year, thanks to the Commonwealth Audit Office, that officers in the Department of Health assisted the Morrison government by knowingly allowing grants under the $1.25 billion Community Health and Hospital Program to be made in breach of guidelines – and unlawfully. The department again was too weak to tell ministers that what they wanted was illegal … The Australian Public Service is not independent of the ministry, but royal commission and other evidence shows it needs better protection from a government culture where deception, unrestrained self-interest and secrecy have undermined a once great public service.

Tony Wright (couldn't find it online)
Mandarins got squeezed out and the public got the pips:

… They had been what was known as permanent secretaries … Theirs was an era that flourished postwar under Robert Menzies, when … many kept their positions for decades. That was never going to continue unchallenged once … Whitlam … Fraser …Hawke …and Paul Keating came along …Hawke abolished the word "permanent" from secretary positions in 1984 … In 1994, Keating … removed tenure from departmental secretaries and replaced the system with contracts … In a single evening [John Howard] sacked six departmental secretaries [in 1996]. Soon, he got rid of 30,000 public servants. Many of them gained new jobs with "consulting" firms … that charged massive sums to develop new ways of delivering what had been the task of government-employed servants … If we are to search for clues to how parts of Australia's public service … became so bastardised that a royal commission would be required … It's worth knowing the history … Abbott … got enthusiastic support for bending public servants to his will … Over the years, some senior public servants learnt to understand that if they wanted to keep their jobs and prosper, they needed to fall in line …

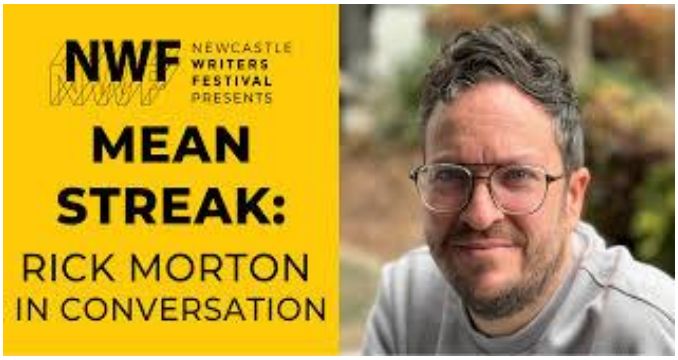
For better or worse, there's no going back to the 1960s. Labor says it will save $3 billion plus on consultants (seriously?). I think that's bull and it's the wrong issue (like getting rid of Phil Lowe is going to fix inflation). If the work that's been outsourced is going to be done now by public servants, it's still going to cost heaps (making a discount, perhaps, for entertainment expenses). It's not who does the work that matters but how those undertaking it and the political masters they answer to are governed – and that includes r/keeping.

And now we have "unpersons"

> Two public servants adversely named by the robodebt royal commission have been quietly scrubbed from organisational charts, including the former top lawyer at Services Australia who had spent months assisting the commission. Annette Musolino, who was general counsel at the Department of Human Services (DHS) at the time of the unlawful debt recovery program and later chief operating officer of the department, renamed Services Australia, is on leave. Both Musolino and Russell De Burgh, an assistant secretary in the prime minister's department, have been removed from official organisational charts …
>
> Services Australia declined to answer questions about whether Musolino had been suspended. The Department of Prime Minister and Cabinet would not comment on De Burgh's employment status … Guardian Australia does not suggest that Musolino or De Burgh have breached the code or are currently suspended …

2024, December 14:

Rick Morton, *Mean Streak* (Fourth Estate, 2024).



This is a book about Robodebt written in the white heat of rage. The author says (p.445) that writing it "*has made me unwell*." Behind the journalistic hyperbole, lies a careful use of the Royal Commission report and documents tendered thereto. It has much to say about our world: administrative law, accuracy, compliance, accountability, "full and accurate", access to information, etc.

> … we now understand the vast design of the scheme created to bilk people for debts they never actually owed … DHS did not actually show the discrepancy figures to people, only the tax office numbers. These were perfectly correct as lump sums, but wildly inaccurate when used in the way the department secretly intended … Current and former welfare recipients were ushered into strange new worlds characterised by the deliberate distortion of the law, of standards and of ordinary human decency … From discordant notes a vast disharmony emerged, one of all-consuming anguish … This is not … an account of the dozens of … middle and upper managers in multiple federal government departments who were either so daft or so professionally greedy that they made callous and ignorant decisions while kowtowing to the higher-ups they knew were wrong … What has unsettled me the most … is that my own well-tendered journalistic cynicism was entirely deficient in analysing this scheme … It was not the unhappy consequence of under-performing mandarins … The people who conjured it designed, built and tested this too-good-to-be-true [budget saving] while acutely aware, at every stage, that the fundamental mathematical concept of averaging deployed in their scheme was wildly wrong (pp. 2-14)

Banality of Evil

cf. Don Watson, *Death Sentence: The Decay of Public Language* (2003)

… management concerns are quite narrow "relative, that is, to life, knowledge and possibility." This technocratic compulsion to conduct business with language that is clinically dead … is remarkably "insensitive" to human endeavour … when I was writing … about Australia's asylum-seeker policies … I [wrote] that even children were kept "behind barbed wire" on Christmas Island … I received a phone call from a media team member … "*It's razor wire,*" the man … said. "*You wrote that asylum-seekers are kept behind barbed wire but we don't use barbed wire … It's razor wire.*" … This kind of pedantry hides a lot of secrets (pp.20-21)

"*There was an acknowledgement that there might be incorrect information being used to raise a debt, but perhaps not any, you know, telegraphing yourself into someone's shoes, saying, well, actually, how would that feel to be told that I owed something and that this might be incorrect. And, you know, that's not a legal question. That's a moral question. Like, how do you feel about that if that's happened even once? Is that a good thing?*" (p.291)

Institutional Dysfunction

In the laboratory of modern government, where efficiency is lauded as a goal in itself, the poor, the sick and the otherwise disenfranchised are the proving ground. They … tend not to fight back very hard … they are easily diminished and dismissed … none of the checks and balances built into the system of governance in Australia worked to stop this rapacious scheme … No agency or authority managed to lay a glove on robodebt for years … [Departmental] Secretaries lived and died by the patronage of their minister … [mutating] the expectations of public servitude so greatly as to usher in a new era of weakness. Top servants were not praised for being frank and fearless so much as they were encouraged to be dishonest, one-dimensional vessels of an unchecked political desire. (pp. 23-26).

Contempt for Accuracy

It's mid-February 2017 … data scientists at the CSIRO have delivered a draft report on the scheme … identifying astonishing error rates in the debts that flowed from the use of the ATO data: … "*Any system performance estimate outcomes that depend upon accurate data supplied from ATO are incorrect*" … Matthew Corkhill, the DHS information management branch national manager, followed through: … "*We do have some concerns with some of the terminology being used … For example, 'overall accuracy of the ATO data' is not core to the department's implementation as the point of the measure is for the customer to check their data*" … Accuracy is not a core issue. I've tried, subsequently, to imagine genuine scenarios where I might wish to write something like that and retain a modicum of self-respect. Few come to mind (pp.16-17)

Abuse of Power or Laziness?

When your own government is lying, trying to prove that is almost impossible. The ministers and departments control the flow of information. The thin array of built-in protections supposed to serve the public are thwarted by any sufficiently motivated individual … by functionaries unknown who are actively trying to keep something secret … the motivation often isn't active contempt at all but simple laziness. "*It just means more work … The reality is that all the things you and I might imagine to be mechanisms for transparency are avoided as much as possible because they require more work*" … a public servant need not be malicious themselves to become a useful part of a broader effort to suppress information that might reveal the misconduct of others; they just need to be lazy enough to avoid extra work (pp. 289-290)

Systemic Dysfunction

It is possible to write a version of the Robodebt Royal Commission findings in which only the people referred for further investigation and possible civil and criminal processes are blamed … There is a large rump of the senior management in the Australian Public Service who would like that to be the end of things, as if robodebt was the result of a few bad actors … [A better understanding] would require a full appreciation for the way powerful systems fever dream their own realities. If, as has been the case for some time now, a large department decides not to write down anything particularly sensitive or to refrain from making records that are easily discoverable [then] this is where the power is manufactured, in the ability of the body to pull down the shutters and rebuke scrutiny.

Robodebt was created in silence and it endured in a tangle of empty spaces that ought to have been filled with basic information and documents about its policy parameters, its assumptions and plain old facts about its design. IT consultant Justin Warren … asked for the business case attached to the compliance initiative because [he] knew these were standard materials … If the large corporate or government agency pursues hundreds of thousands of dodgy debts over many years and does not stop unless it is forced to, its intention was to defraud the Australian people … Justin Warren sums it up more neatly: the purpose of a system is what it does (pp. 416-434)

Concealment

Using the Freedom of Information Act is clumsy at the best of times and its overseers have become adept since it began in the 1980s at massaging the interpretation and intent to frustrate otherwise reasonable claims. The tricks are as small as they are effective … Most of these tricks are technical and sinister in their simplicity but tend to make someone complaining about them sound like a conspiracy theorist … Through the Royal Commission, we've now seen evidence … of the tactics departmental officials used against powerful (but spineless) investigators like the Commonwealth Ombudsman. They outright lied to the Senate … It is precisely this context that informed the final recommendation 57 by Commissioner Catherine Holmes … that the Freedom of Information Act should have section 34 repealed entirely. This section sets out a bunch of broad reasons a document can be exempted … where they may tangentially relate to a Cabinet process … In its official response to the Royal Commission findings, the new Labor government … accepted in principle or in full what it said were "all 56" of the recommendations. It was never going to accept recommendation 57 because such a proposal threatens the very power base of all politicians …

The Australian Public Service Commissioner Dr Gordon de Brouwer … made all the right noises about ethical decision making and then fell into line … by suggesting that not only should the Commissioner's recommendation on Freedom of Information not be adopted but actually the law should be weakened because it had stopped public servants writing things down … "*the Robodebt Royal Commission is one example of many of how public servants avoided putting their advice in writing out of a concern that it would be public … It is no use just telling everyone to change … When it comes to deliberative material, FoI does not ensure transparency* [because advice is not being written] *and it undermines integrity* [because advice is not being written]" … therefore the FoI laws aren't working? Grow up. (pp. 418-429)

And much, much more.

PS. The book has no index. Big, black mark. Australia has some fine indexers. Why not use them?

2024, December 15:

PPS. This news story on the "consequences" when APS investigates its own misconduct:

> The report concluded some respondents had "lost their way and compromised their professional standards".
>
> "These public servants lost their objectivity and, in all likelihood, drowned out the deafening and growing criticisms of the scheme to pursue an operational objective," the report's summary said.
>
> "Almost all failed to challenge the status quo as concerns emerged over time.
>
> "As a general proposition, even the most experienced public servants demonstrated an inability or unwillingness to have difficult conversations while preserving relationships within and between departments and with their ministers."
>
> The public service and finance minister, Katy Gallagher, said the APSC review was "robust, independent and fair".

Nothing to see here.

2024, December 25:

<<The Australian Public Service Commissioner Dr Gordon de Brouwer … made all the right noises about ethical decision making and then fell into line … by suggesting that not only should the Commissioner's recommendation on Freedom of Information not be adopted but actually the law should be weakened because it had stopped public servants writing things down …
***"the Robodebt Royal Commission is one example of many of how public servants avoided putting their advice in writing out of a concern that it would be public … It is no use just telling everyone to change … When it comes to deliberative* material, FoI does not ensure transparency [because advice is not being written] *and it undermines integrity* [because advice is not being written]" … therefore the FoI laws aren't working? Grow up. (pp. 418-429)>>**

In the 1970s, Lindsay Curtis, a senior mandarin from A-Gs, was "Mr FOI". I was involved with some of the battles he fought within the bureaucracy because the FOI and Archives Bills had become conjoined and I was present at some of the meetings. Here is an extract from his obituary:

The idea of citizens obtaining access to documents which might reveal how important government decisions are made concerned senior mandarins in the Public Service. To give access to the merely curious (even journalists) was thought to undermine the efficient and proper working of government. One of Lindsay's many roles was the missionary work of persuading departments that FOI was desirable, or at least acceptable. His achievements in administrative law reform were readily recognised by some, if not all, Ministers, and by members of Parliament before whose committees he appeared often.

The successful passage of FOI and the associated administrative law reforms seemed to crown Lindsay's efforts with victory. But corporations and bureaucracies never forget. The arguments made by de Brouwer in the wake of Robodebt are, practically word-for-word, those that I heard Lindsay battling with fifty years ago.

Morton's book chronicles how hard it was to get at the truth about the scheme. Matthew Ricketson, Professor of Communication at Deakin, tells the story of the long path to discovery trekked by the media and agrees with Morton that the bureaucracy's abuse of cabinet-confidentiality is partly to blame:

The royal commission had been alarmed by how the government departments responsible for robodebt had routinely appended documents to cabinet submissions as a way of avoiding scrutiny under FOI. In truth, both major parties have been guilty of this practice since the FOI Act was passed in 1982. In opposition, politicians love to denounce government abuse of the cabinet confidentiality exemption; in government, their tune changes. Which means

RECORDKEEPING: HIT AND MISS

Mark Dreyfus was probably never going to accept Commissioner Holmes's recommendation, though that by no means negates the need for change.

How sad and how true to life: *If nothing changes, nothing changes*. Lindsay used to say that FOI would be worthless dead-letter law unless it was accompanied by a genuine change of spirit in the way the bureaucracy did business. In other words, FOI could not change bureaucratic practice unless the bureaucracy changed and made it work.

PS In the public service, if you want to call someone an idiot, you preface your remarks using the phrase *With respect*. If you want to say you think they are really, really, really an idiot, you say *With great respect*. I was once present at a steely confrontation between Lindsay Curtis and Peter Scott that went something like this:

> **Curtis**: With respect .....
> **Scott**: With great respect .....
> **Curtis**: With very great respect .....
> **Scott:** With the very greatest respect.....

2024, July 26: NSW Recordkeeping in the Premier's Office

<<24 Oct., 2020: 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.>>

And still they're wittering on about the distinction between corruption and crime (or, rather, wanting to argue that *if it ain't criminal, it ain't corrupt*).

> Gladys Berejiklian has lost a high-stakes court bid to overturn findings she acted corruptly in a major blow to the former premier's reputation and win for the NSW integrity watchdog ... The NSW Independent Commission Against Corruption delivered a bombshell report in June 2023 that concluded Ms Berejiklian engaged in "serious corrupt conduct" because of [an] undisclosed relationship ... ICAC said her deliberate failure to disclose the relationship in those circumstances was "wilful" and unjustified. Mr Walker labelled those findings "illogical" as the watchdog had also deemed there was insufficient evidence to pursue criminal charges.

cf. The Murphy Case where he's been effectively rehabilitated in the public's (confused) mind by legal cronies (of one kind or another) some of who have argued that the only bar for a High Court judge is whether or not he's a convicted criminal.

Toxic Assets

2018, December 3: Much ado about toxic assets

If anything lies at the heart of the distinction between r/keeping and collection, it is description. This story from the ABC is too delicious to overlook:

> "Great pictures of Hitler" and a Nazi iron cross book "filled with magnificent photos" — these were the descriptions inside a catalogue spruiking a war memorabilia auction that sold dozens of Nazi Germany artefacts near Canberra on Saturday. Opinion was fiercely divided on Facebook ... "Only a certain type of person would be proud to own a portrait of this abomination of humanity, or anything... that relates to it," one comment read. Another person called for Third Reich items to be destroyed, for "glorifying an evil regime that poisoned many with its ideology". But others rejected that outrage, saying the existence of the memorabilia "does not glorify it, but rather brings a tactile realism that words in a book never can". "They must be preserved for the same reason we preserve any and all historical artefacts, regardless of their symbolism," another said. Some agreed the artefacts should be preserved, but not profited from, instead suggesting they be donated to the Australian War

> Memorial … [Auctioneer, David Smith] said he would review the language of future catalogues … In October, a Melbourne auction house withdrew Nazi artefacts from an upcoming sale after a Jewish anti-bigotry activist said the objects crossed "so many red lines" … The new policy matches that of major auction house Sotheby's, which had a worldwide ban of the sale of Nazi memorabilia. Online platforms have moved in a similar direction, with eBay reportedly permitting "items of historical significance" as listings, such as Nazi currency and stamps, but having banned Nazi propaganda, parts of military uniforms or other items bearing the Nazi symbol. The BBC reported Facebook had also removed promotions for the sale of Nazi goods from their site on several occasions — though they remained for sale on many Facebook pages.

So, what is the problem? Is it the very existence of these things and their preservation instead of their destruction? Is it their trade and "collection" by anyone at all? Or would it be all right for a "respectable" institution such as AWM to acquire them but not for you and me? If not, why not? Is it the description and promotion of the items for sale (including words like "magnificent" and "great pictures" that's the difficulty? Would the problem go away if they were described differently (for at least some of those outraged and offended)? In short, is this a story about.

- What we do with them?
- Who it is who does something with them?
- How we describe and present them?
- The political fall –out of dealing with toxic materials?
- The kind of materials involved (stamps yes, uniforms no)?

Probably the difficulty lies in all of these and some more besides.

In a purist sense, these are not records. But we are moving away from a purely transactional view of records-making and these materials (some would say) could be treated as records, if properly contextualised. I have for some years been using the phrase "evidence of event or circumstance" to reflect that broader understanding but no one has ever taken me up on it. Given that, for the sake of argument, would a r/keeper be any better placed than a collector in dealing with these dilemmas? Is treatment of a record different from treatment of an "historical artefact"? The r/keeping concepts of whole-ness and completeness would be one point of differentiation that might be helpful. So might our ideas on structuration which would value the assets in relation to other things rather than by any inherent quality they were deemed to have. The r/keeping values of accuracy, authenticity, and impartiality might also help by focussing on referential rather than intrinsic integrity.

2018, December 4:

<<John Machin: … it is important that archives preserve this sort of thing to afford the future an opportunity (and only an opportunity …) to avoid history as fake news prevailing … It isn't so much the intent on the keeper as the intent of those accessing. It isn't available to the keeper to know whether the purpose of access is veneration or education (for example). I am suspicious of the wholeness criterion too. How big (how

deep perhaps?) is the record-keeping whole? In saying "this is it" are keepers enforcing an orthodoxy or boundary that is as potentially toxic as eponymous assets in this thread?>>

<< not sure it is easy to get into the record-keeping intent though >>

A r/keeping approach to this kind of material would need to get beyond customary ideas about creation within a transaction. Societal provenance, for example, must confer similar properties but in a different way; if societal provenance is truly provenance then it must "create" the context in which the material is to be preserved and understood. So we would portray these objects as the "creation" of the social context in which they came into being, just as we portray transactional records as the creation of the hand of the records-maker. If you accept the possibility that transactional records may be the accidental result of a process (rather than a purposeful one) it's not much of a leap to trace a connection between social activity and the formation of records.

<<I am suspicious of the wholeness criterion ...
are keepers enforcing an orthodoxy or boundary...>>

Yes. But all description does that. Enforcing a boundary or "orthodox" view is the point of description (that's the way we do it). It is how we preserve the r/keeping quality of the materials (their meaning) - by insisting the structure and context of the records in hand are this rather than that. by enforcing it onto the notice of others. We must take that brave step while adhering to our values of impartiality, authenticity, and accuracy. You're right to be suspicious - we must all be, and a bit humble as well - but we mustn't lose our nerve. Ultimately, these boundaries, these "orthodoxies", must be contestable, nuanced, qualified, ambiguous, but they still can't be advanced tentatively. My answer to that problem is parallel provenance.

2018, 5 December:

<<Andrew Waugh: I think that we're talking apples and oranges. Chris seems to be focused on a dichotomy between 'recordkeeping' and 'collecting'. If I understand him correctly, for Chris collecting is selecting individual documents for their perceived value, whereas recordkeeping ensures that the records, the relationships between the records, and the context around the records are captured. When I talk about collecting (and collection), I'm talking about the appraisal decisions...we have the perfectly good word 'appraisal' to describe these decisions...I like 'collecting' because it makes explicit that the purpose of 'collecting' is to build a 'collection'. And this leads immediately to the questions: "a collection of what?" and "what is the purpose of the collection?" and "who will use the collection and why?" A consideration of these questions leads immediately to Adrian's questions about the social value of recordkeeping/archiving...To sum up: I think the key difference between Chris' position and mine is the scope of what we are collecting. Chris seems to be focussed on collecting documents, whereas I am interested in collecting fonds and series (and, perhaps, not collecting particular items)...I should consider collecting in the continuum. It's clear that participants at all stages are focused on building and managing a collection that supports one or more purposes...Archivists are definitely interested in culling the collection, but also interested in memory.>>

<< Archivists are definitely interested in culling ... but also interested in memory >>

When I was in NZ they adopted the slogan “Preserving the nation’s memory” (or something like that). I suggested that in light of our retention rates, as appraisers and collectors, a more appropriate slogan would be “purgers of the nation’s memory” but it didn’t take.

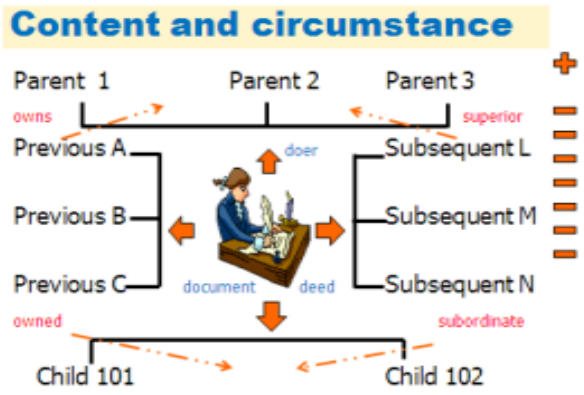
<< I think that we're talking apples and oranges. Chris seems to be focused on a dichotomy between 'recordkeeping' and 'collecting' >>

I am focussed on a dichotomy because I believe there is one. I am using those two terms as totems standing for what I perceive to be two different mind-sets which can be discussed as to their substance regardless of the labels we use. I'm not interested in semantics. I don't care what names they're called by – apples and oranges suit me just fine but I don't think that's what you meant. My original objection to the term "collection" as one that r/keepers ought not use was that it betokened a loss of understanding of what we do and why we do it. I would happily substitute the term "fruit cellar" for "collection" if we could thereby recover a proper understanding of our mission. You are seeking to eliminate the differences between two concepts by focussing on different applications (appraisal vs something else, items vs Fonds). Couldn't disagree more. Who's focussing on dichotomies now? I want to accentuate the differences between the concepts by focussing on how they operate differently when applied not to different operations but to the same operation, in each and everything we (and they) do – be it appraisal, custody, access, or anything else we both, r/keepers and collectors, undertake.

<<If I understand him correctly, for Chris collecting is selecting individual documents for their perceived value, whereas recordkeeping ensures that the records ... and the context around the records are captured.>>

You don't understand me correctly at all. Perceived value is a common goal but the kind of value archivists and collectors see and struggle to reveal is different. As Adrian has said, there must be a purpose behind what we do – r/keeping for r/keeping's sake would be so daft as to be laughable. My point is that r/keepers serve value (as they perceive it) differently to the ways collectors do; perhaps we perceive different value in the same material (larger question that). We don't document structure and context because it is a pleasant way to pass a Sunday afternoon. We do it for a purpose and that is to make and keep records and we make and keep records for a purpose – because it is how we serve those "higher" aims Adrian alluded to. And we believe that the way collectors serve those higher purposes (though their ways have utility which is not the same as the utility of ours) cannot accomplish what we strive to do. I'm being oblique because as soon as you use concrete terms for this stuff people start nit-picking the terminology and obfuscating the concepts. As to method, it should surprise no one to hear that it is in description that I think the contrast (dichotomy, if you like) is most stark.

<<To sum up: I think the key difference between Chris' position and mine is the scope of what we are collecting. Chris seems to be focussed on collecting documents, whereas I am interested in collecting fonds and series (and, perhaps, not collecting particular items>>



Bad summation, Andrew. I have made fun of collecting for what I perceive as a uni-faceted view of material (in what I call Flatland) by way of contrast to a multi-faceted view taken by true r/keepers. I don't mind appealing to my own writings as evidence of my intentions because so few people read my stuff. Anyone who has would know (without the need for me

to tell them) that the handling of items is way, way, way down on my list of interests. Down there (how do you laminate a C19th document, for e.g.) little distinguishes the role of a r/keeper and a collector or a curator or an auctioneer, for that matter. Up above (framing material within structure and context) the methods will diverge. So, items interest me very little in themselves or as a focus for this discussion; fonds and series interest me a lot. If you want to sum up my "position" accurately it is that you can collect items most efficiently and usefully so long as you ignore the r/keeping demands of handling series and fonds correctly.

<< … I should consider collecting in the continuum. It's clear that participants at all stages are focused on building and managing a collection that supports one or more purposes….>>

In this post-script, you are diversifying the meaning(s) of collecting and r/keeping to such a degree that I think we would be better off using the terms apples and oranges. It's the thing that matters, not the word(s) we use to describe it. Once you've pureed the apple you can't squeeze the orange.

PS. I must stop saying "we". So far as I can tell, from the lack of feedback anyway, very few people now agree with my view of r/keeping. And they're getting fewer.

<<Adrian Cunningham:… Chris argues that labels don't matter, but I beg to differ. What he characterises as 'collecting' is what I would call 'bad collecting' … it is unfair and a distortion of reality to tar all collecting with this broad brush. It impugns the valuable work of a lot of dedicated people … I could point out that there are lots of examples around of bad recordkeeping, but I would never try to argue that because there are examples of bad recordkeeping, that all recordkeeping is therefore bad … There should be room in our world for both good recordkeeping and good collecting … Let's not indulge of caricatures of reality that divide us into warring camps. We are too small and our work is too important to allow that to happen.>>

I'm not sure that "good collecting" and "bad collecting" advances matters a great deal. If by "good collecting" you mean activity that respects r/keeping values and by "bad collecting" you mean activity that doesn't, then I quite agree with your distinction. But I fail to see (in that case) why calling them apples and oranges isn't a better approach than lumping them together as "collecting" and leaving each confused listener to sort out the difference between good and bad. You may forget that I was part of a symposium you organised many years ago in which I argued ("Beating the French") that collectors and archivists could share a common theology – in effect making the same distinction that you have now. Where, in what has been said so far, "very sterile recordkeeping" comes from I can't begin to imagine. Does that mean, Adrian, that we must now expand our vocabulary to include "good r/keeping" and "bad r/keeping" also? The only difference between us, it seems to me, is the labels (not the ideas):

Chris	**Adrian**
r/keeping	good collecting
collecting	bad collecting

Exactly the same distinctions (if I understand you) would work if the labels were changed:

Chris	**Adrian**
r/keeping	r/keeping
collecting	collecting

If all collectors of documentary materials applied r/keeping values (good ones, of course, not those nasty sterile ones), there would be no bad collectors and there would be no warring camps and all would be sweetness and light. If bad collectors violate r/keeping values (when dealing with records) then there should be warring camps – otherwise the r/keeping values can't be of very much value to begin with. If they're important, they're worth fighting for. If they aren't worth fighting for, they're not important. If good r/keeping is very sterile, it shouldn't be given respect by me or by anyone else.

I honour **<< dedicated people who understand and are committed to doing good collecting >>** but I do so because I would regard them as r/keepers, not as collectors. As I indicated in an earlier post, I am also prepared to honour dedicated (well-meaning) people who don't understand good r/keeping but who are doing their best to serve "higher values" by using bad collecting methods (as you call them). I would simply call them collecting methods. When it comes to ill-feeling, Adrian, I must say that the pejorative terms "good" and "bad" appear to me to be more inflammatory than any language I have used. And I would go even further, as I think I have earlier indicated, and say that there are some materials (quite a lot actually) that are better handled in collecting mode than by using a r/keeping approach. So, to forestall another possible canard (dear me, where do they come from?) I am not trying to subsume all documentary activity within r/keeping.

These distinctions are not really about place they're about how we think and act wherever we are, but if there is anywhere in this country where the subtleties of all this are being played out on a daily basis it is, I imagine, AWM - museum, archives, library, commemoration, you name it, they're it. And, for the most part, doing a darn good job so far as I can see. And it will be recalled that my original posting from the ASA Conference was a lament that too many archivists are pursuing what Adrian would call bad collecting practices.

2018, December 6:

<<John Machin: Well said Adrian. (I confess that I am interested in semantics though.) More generally to the thread: did we drift from the topic of difficult decisions on content of archives? Is there anything worth getting back to in that? I made what I thought was a consciously naive claim about needing to abandon responsibility for the use of archives that either slipped by or was so naive that it was kindly ignored. I was curious about which it might have been.>>

Not quite sure which of your earlier remarks you're referring to. Was it <<It isn't so much the intent on the keeper as the intent of those accessing. It isn't available to the keeper to know whether the purpose of access is veneration or education (for example).>>

There was story the other day about the new Monash Centre in France failing to draw the numbers predicted. Loads of connections in this story with our thread. To focus on only one. Propaganda for the Centre describes it thus:

> This cutting-edge multimedia centre reveals the Australian Western Front experience through a series of interactive media installations and immersive experiences...The experience is designed so visitors gain a better understanding of the journey of ordinary Australians — told in their own voices through letters, diaries and life-size images — and connect with the places they fought and died. A visit to the Sir John Monash Centre will be a moving experience that leaves a lasting impression.

So the Doers responsible for this Centre (keepers, curators, collectors, librarians, givers-of-delight, archivists, showmen, educators - call them whatever you please) clearly have an intention to push a message onto those accessing the Centre. Whatever else they are they

don't seem to want to be neutral (not saying they ought to be). The veneration/education sought in this case doesn't seem to be drawing the numbers predicted by the hype. I think the Doer (keeper, curator, ... etc.) can't help but have an intention. We can't control the intent "of those accessing", but we sure as gollars can shape and even manipulate it if we choose (and if this story tells us that we can't take ordinary, sensible people too far away from common sense, then that's comforting).

I don't agree that the thread drifted from this issue at all. I have no objection to collecting values and methods adopted by collectors in the service of collections. My objection is to their adoption by archivists dealing with records. I think that difference is material to the question of how the contents of the Monash Centre are presented. Like the AWM, the Centre is multi-disciplinary. Archivists, curators, librarians, etc. will all be involved (I suppose) and one profession cannot expect to prevail. But the result won't be the comfortable blend of professional strengths that some seem to suppose is the inevitable outcome of such collaboration. It is (or should be) the result of fiercely contested "warring" views (to use Adrian's word for it). The result will be a compromise - good, bad, or "it'll do" depending on the strength of the contesting parties and their moral sense of the "higher purpose" that we have spoken of.

2018, December 8:

<<Debra Leigo: ... it seems to me that the main issues are how the items are described and presented / what is done with them and who is doing it. If the collecting is done by a public institution, this somewhat removes the commercial value and therefore profiteering by the private sector. I do like Chris' expanded definition of record to include "evidence of event or circumstance" and have long believed that artifacts can be evidence of activity and, with appropriate contextual description, add value to traditional record collections. Artifacts, I believe, provide visual representation and are vital in engaging with public and illustrating the past.

In response to John's post (4/12/2018), I suggest that the intent of the collector (or record-keeper) must always be to ensure reliable, authentic and contextualised access to history (however recent or ancient). As to the intent of those who access the collections / records, so long as we are ensuring privacy and security requirements are met, then no, I do not think we can take responsibility for the intent of those accessing collections (or records). I too, was pleased to hear Claire G. Coleman and other keynote speakers at ASA Perth Conference iterate the need to retain contextualised evidence in the Archives, no matter how ugly.

Like Adrian (5/12/2018) and those posting in other recent threads, I do believe labels, semantics and dichotomy are important, however, as context has much to do with meaning, my use of terms here is very much dependent on the context from which I am writing, and much of that context is derived from my knowledge, experience, understanding and comprehension (or lack thereof) of the posts and thread to which I am responding.

Chris (5/12/2018) "PS. I must stop saying "we". So far as I can tell, from the lack of feedback anyway, very few people now agree with my view of r/keeping. And they're getting fewer." So far as I can see, this is the 9th response and 5th author to your original post in this thread, so obviously some are reading. Finding the time to keep up with readings form a variety of forums is one thing, digesting, comprehending (especially when the conversation seems to steer away from the original topic into debates on semantics where contexts are often lacking) and having the courage to respond is another. Respondents in other threads have reminded us that semantics can be dependent on how we think, ergo the context within which we are thinking.

Summarising from Peter's post (4/12/2018 - ok, it's in my emails but I don't see it here so I obviously need to improve my Groups navigation skills), for what it is worth, I do think that, generally, we could benefit from more archival thinking in our record-keeping (possibly paraphrasing Kate Cummings, recently) and improved record-keeping in our archival practice.>>

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.

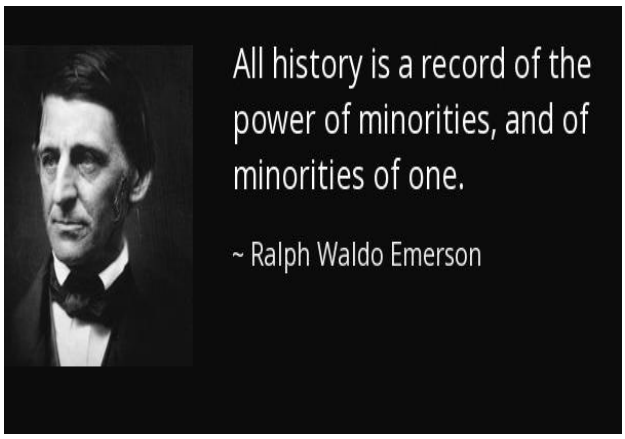
<<Gene Metzack: Thanks for your nuanced response Chris, lots to think about. You're right, that community members and subjects of records don't all have uniform responses to what should happen with records. I guess this is part of what I was trying to grope towards: that as archivists and recordkeepers 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, June 28: Toxic assets (again)

Custodians are traditionally preservers of evidence, supposedly indifferent to the way it is used. But how we describe the material, how we present it, how we contextualise it (ultimately whether we decide even to keep it) necessarily involves interpretation and judgement. What limitations of taste and decency constrain us? An article by Peter Beaumont in The Guardian, coming at the matter from a completely different perspective from that of the r/keeper, reaches a position intriguingly aligned to our professional concern with evidence:

> Julia le Duc's image of Óscar Alberto Martínez Ramírez and his 23-month-old daughter, Valeria, lying drowned on a muddy shoreline after an attempted crossing of Rio Grande into the US appears like a summation of all the arguments about the Trump administration's harsh immigration policies … It is an image … that … raises a profound challenge: how should we respond to such horror?

That question was asked best … by Susan Sontag … [when] she asked what it meant for images to "protest suffering, as distinct from acknowledging it?" "There is a shame as well as shock in looking at the close up of real horror," Sontag suggested. "Perhaps the only people with the right to look at images of suffering of this extreme order are those who could do something to alleviate it … or those who could learn from it. "The rest of us are voyeurs, whether or not we mean to be."

> … Too often when we contemplate such images of death they are somehow exotic, other; they seem to depict things that happen to people outside our own experiences. None of which is an argument for not looking. Only for looking harder and more purposefully.
>
> … One issue, as a number of those who, like Sontag, have written critically on images of atrocity, is the question of context … The reality is that, although we know a little of the meaning behind what Le Duc has shown us, we still do not know enough … to protest and not simply acknowledge what we see in Le Duc's harrowing picture requires that we do not look away; that we demand to know the context and ask the hard questions. That we bear both witness and *know* what we are seeing.

2019, September 2: The power of artefacts

Yet again, an exhibition of "toxic" historical materials is being seen as dangerous and in need of restraint (if not suppression). The latest report pertains to an exhibition of Nazi design in a Netherlands museum. In all such cases (that I have seen reported), it is the public display and possible dissemination amongst the unwashed that would-be censors want to inhibit rather than the knowledge the objects on display represent. There is presumably nothing in this exhibition that tells us what we don't already know. But the artefacts are deemed to be inflammatory. Or perhaps, as Andrew suggested in an earlier posting about facts and objectivity, it is interpretation or selectivity that is at fault (the suggestion that the museum is "glorifying" the Nazis).

> [The exhibition] … has opened … to protests and a request for visitors to the museum not to take and share photographs for fear of the exhibits being glorified on social media … the exhibition has been criticised by the Association of Dutch Anti-fascists, which has called in vain for local authorities to intervene … The Museum of Design's director, Timo de Rijk, said he was sensitive to the need to avoid glorifying the exhibits and all efforts were being made to treat the issue with sensitivity … De Rijk said: "I have had no signal that people from the far left or far right are planning to come to the museum, but you never know. From the start we explain that this was a racist ideology and that the party's aim was to establish a racist volk culture. The exhibition has the feel of a documentary." … De Rijk said he had

> spoken to the protesters before the opening of the exhibition, which falls on the 75th anniversary of the liberation of Den Bosch from the Nazis. He said: "They are a group of young people from the Communist party, and we had a long conversation. They are concerned that maybe we are glorifying it all. I would not be doing this if I thought we were, but I can understand that they are aware of that kind of evil in history."

The idea that preservation and display of the artefacts of evil is, of itself, a "glorification" of the evil they represent is grotesque. But it is the public display (and resulting exposure amongst the unread) that seems to raise passions in these cases and "glorification" is just a muddle-headed way of expressing ideological disapproval. Does this confirm that the artefacts of evil (or of good, for that matter) are perceived to be more powerful than the knowledge they convey? It is the artefacts of heresy, not just the forbidden books, that inquisitors seek to eradicate. Or, is it rather a case of cultural elitism (forbidden knowledge best kept away from the masses who can't be trusted not to be corrupted by it)? Not unlike classical pornographic texts that were once safely kept in the original Latin and Greek so that only those with an upper class education could read them. When I started working at NLA, the porno was kept in a safe in the Rare Books Department (or so newbies were told - it might have been a hoax). Or is it simply that the anti-Nazis in this case have their own simplistic narrative of Nazi evil that they fear the exhibition might impeach?

In the same vein, steps are being taken to block access on the Internet to videos of the Christchurch shootings. The utilitarian rationale appears to be that nut jobs are being "inspired" by the events depicted. There's reliable reporting that they are; but should the videos be banned for that reason? The nutters' response to the visuals, it is feared, will be more toxic than mere knowledge of what occurred which (as the trial approaches) is being reported in lurid detail. The argument seems to be that urban terrorism is fed by such exposure – that it is a cause rather than a symptom. The same argument is applied to the alleged link between rape and pornography where, once again, it is visual rather than textual representation that draws the sternest objections.

2019, September 9:

<<Andrew Waugh: Voltaire's principle 'I disagree with everything you say, but will defend to the death your right to say it' sounds nice, but I've never noticed that any society ever accepted it. All societies have subjects that are taboo ... Serious taboos are enforced by law, more often by social pressure. If the latter, sometimes this taboo is enforced only on particular groups in society or in particular modes of discourse ... Nazi symbolism is certainly a taboo subject for many ... I think it is quite reasonable to ask why this gallery chose this particular topic for an exhibition at this time and in that

place. It's also not necessary to automatically believe the protestations of innocence of the gallery or its staff ...>>

Should Voltaire be dismissed because no society has ever accepted it? Are the aspirations of religion and philosophy of no account because, although they may be esteemed by many, they are accepted by few? Is Voltaire still famous because he succumbed to the power of the majority or because he resisted it and gave us ideas with which to struggle against its tyranny? Should we listen to Locke or Spinoza? German society accepted Nazism but perhaps they could have benefitted from a dash of Voltaire. Understanding why society accepted Nazism and the complexities of that acceptance is a worthwhile and a worthy study. Which brings us to the question of how recordkeepers stand in relation to the society in which they live. Are we slaves to it (good little Nazis when we're asked to be) or do we stand with Voltaire?

<<The concept of taboo subjects (to particular groups in society) explains why the collection of material on certain topics is strongly contested.>>

Then the question for us is how to deal with taboo subjects and with those who would contest the validity of what we do. Is there is a qualitative difference between a taboo subject and a record of events and circumstances pertaining to or arising from a taboo subject? Some of us would argue that r/keeping values and purposes stand outside societal norms and objectives, that our dedication to Truth absolves us from engagement with social mores. I do not subscribe to that. But engagement is a different thing to submission.

The display of heritage materials cannot avoid telling a story. Two stories really. What the materials mean (how they can or even should be understood) and how we struggle with memory (by enforcing taboos or questioning them). As tellers of those tales, we are unavoidably participants in our own societal milieu – prisoners of it, upholders of it, shapers of it, and sometimes insurgents against its taboos. But our participation rests also on something more: our professional values, our mystery – preserving the integrity of the record and the stubborn facts it reveals.

2020, February 5: Toxic assets yet again

Is there a difference between understanding the past and obliterating it? Does preserving the past carry an obligation to explain it? German courts are wrestling with the legitimacy of preserving and displaying evidence of hatred.

Martin Luther

Wittenberg "Judensau"

A court in Germany has rejected a case calling for a local church associated with the Protestant firebrand Martin Luther to remove an ancient antisemitic carving from its wall ... A panel of judges at the state's superior court in Naumburg found the image "did not harm Jews' reputation" because it was "embedded" in a wider memorial context ... Announcing

> Tuesday's ruling, Buchloh said "anyone looking at the relief cannot fail to see the memorial and the information sign the parish put up in 1988" placing it in the proper context … the importance of the Wittenberg relief is tied to Luther, himself a notorious antisemite, who preached there two centuries later … The superior court's decision not to order the relief removed can still be appealed against in Germany's highest court, the federal court of justice.

What should happen if the image was found, in fact, to harm Jews' reputation? Should it then be destroyed? Does preserving the image uphold what we abhor or combat it by preserving the evidence? Do historical assets speak for themselves? On what basis do we, describing and displaying toxic assets, speak for them? What obligations bear on a curator to "explain" toxic assets (the information sign put up in 1988)? According to contemporary mores or objectively (in value-free terms)? Do historians (and archivists) judge Genghis Khan by his values or by ours?

2023, June 6:

From SMH:

> The ghost of Leopold II still looms large over [Brussels] … parks, avenues and buildings bear either Leopold's name or honour the generals he sent to far off lands as part of his ambitious plans for his kingdom and its modest capital … [he] took control of the Congo during the 19th-century scramble for Africa. His ruthless and bloody plundering in the region has ever since left a stain on Belgium's reputation. Until a sharper focus over the past two decades, many Belgians had remained ignorant of their country's harsh colonial rule over several African nations … Slave labour was used to harvest products including rubber. The proceeds laid the foundation for the modern-era prosperity of Belgium … But now Brussels, having endured mass protests as part of the Black Lives Matter movement three years ago, is intent on correcting and contextualising its history as the government embarks on a world-first program to decolonise its public spaces … "The whole idea of this is let's recognise the past, let's embrace it and don't fall into the trap of individually blaming citizens. It's a collective responsibility of the past. And so, we have collectively to recognise it as a society."
>
> Belgium only began to seriously confront Leopold's regime after the publication in 1998 of Adam Hochschild's *King Leopold's Ghost* … Hochschild shocked the world with the horrific figure of 10 million Congolese dead in a "forgotten holocaust" – a figure some historians continue to dispute. Early reports of the horrors prompted the emergence in the 1900s of the world's first international human rights campaign. Among those to join the campaign was Mark Twain [and] also led Joseph Conrad to set *Heart of Darkness* there … In April 2019, the Belgium government apologised for the kidnapping, segregation, deportation and forced adoption of thousands of children born to biracial couples during its colonial rule. Last year King Philippe of Belgium expressed his "deepest regrets" … but the royals remain split and have ruled out reparations. The king's younger brother, Prince Laurent, has refused to concede that any blame should be attached …
>
> A working group that began efforts in 2020 … has proposed universal guidelines that can be adopted by other cities, amid the fallout in the US over statues of Confederate generals and in the UK over statues of slave traders … Included in the final report on the issue were plans for King Leopold in the Place du Trone … The group suggested several options, including concealing the statue with a structure that provides information on Belgium's colonial history, and removing the figure entirely and storing it in a depot full of similar symbols. A more radical solution suggested it could be melted down and re-forged as a memorial to victims of colonialism … Another artwork, a bust of Lieutenant-General Emile Storms, was quietly removed from a park last year in the city's Square de Meeus under the pretext of restoring the public gardens. It will return to public display but not in its original place or state. Storms, a soldier, explorer and official for the Congo Free State, is notorious for the killing of Lusinga Iwa Ng'ombe, a Congolese chief who was robbed, murdered and beheaded by the colonial general in 1884. His skull was taken as a personal trophy.
>
> Belgium has an estimated 4500 statues, street names or other public reminders of the colonial era. Removing them all would be an enormous task, but [Pascal Smet, Minister for Culture & Heritage] says it would also risk wiping out the past when the country should instead be engaging with it. "If you throw them away then you throw history away. It is

important, at least for me, that you contextualise history," … Smet's plan does not recommend tearing down all statues … Some monuments could be removed to museums or a statue park, similar to existing "graveyards" of Soviet monuments in the Hungarian capital, Budapest, and in Tallinn in Estonia. Other monuments could be renamed or put in context with information plaques … [Georgine] Dibua Mbombo, who runs Bakushinta, a group dedicated to promoting Congolese culture in Belgium … told local reporters that agreeing on how to contextualise works that glorify a colonial past was not simple, and that putting up information panels or QR codes was not a solution because she was unconvinced that people read them …

2020, February 24: More toxic assets

Which is worse a fictional distortion or an authentic artefact? Is censoring the past a distortion or a correction? How can you "remember" what hateful words "led to" without preserving an uncensored record of what was said?

> The Auschwitz Memorial criticised Amazon on Sunday, for fictitious depictions of the Holocaust in its TV series Hunters and for selling books of Nazi propaganda … On Friday, the Memorial retweeted a letter from the Holocaust Educational Trust to Amazon asking that antisemitic children's books by the Nazi Julius Streicher, who was executed for crimes against humanity, be removed from sale.
>
> "When you decide to make a profit on selling vicious antisemitic Nazi propaganda published without any critical comment or context, you need to remember that those words led not only to the #Holocaust but also many other hate crimes," the Memorial tweeted on Sunday. In an email, an Amazon spokesman said: "As a bookseller, we are mindful of book censorship throughout history, and we do not take this lightly. We believe that providing access to written speech is important, including books that some may find objectionable."
>
> … In December, Amazon withdrew from sale products decorated with images of Auschwitz, including Christmas decorations, after the Memorial complained.

The Memorial isn't asking (it seems) for the toxic assets to be supressed, but rather that they be critically commented on and contextualised. That said, what words do we actually use to critically comment on and contextualise toxic assets to the satisfaction of those who memorialise the Holocaust or any other Great Crime (or any Great Benevolence for that matter)? Should we try to satisfy them? How do we prevent the portrayal of contextualised assets degenerating into propaganda? Should we welcome the controversy over interpretation itself as a form of contextualisation?

2020, February 26:

…. and it seems that the censorious have succeeded.

According to The Bookseller –

> Amazon has stopped selling books by convicted Nazi official Julius Streicher, following calls from the Holocaust Educational Trust (HET) to remove the material. *Der*

> *Giftpilz* or *The Poisoned Mushroom*, was originally published in German in 1938 by Streicher .... HET wrote to Amazon on Friday 21st February asking for an explanation, for the publications to be taken down with immediate effect and has called for a review of Amazon policies to ensure it does not happen again.
>
> Karen Pollock, HET c.e.o., said: "This book is obscene. It is worrying that distinguished publishers like Amazon would make available products that promote racist or hate speech of any kind, let alone those from the darkest period of European history. We have already raised our concerns about similar issues over the past decade. "As the Holocaust moves from living history to history, our survivors regularly raise the concern that Holocaust denial and antisemitism still persist.
>
> "We urge Amazon to do the right thing and remove this material from sale immediately, audit what else it may be on sale, and review their policies to prevent this ever happening again." ...

1. If the sale of these materials is outlawed, what are the implications for custodians? What are the rules for its use and display? Should it be preserved at all?
2. Is it the case that trading in the evidence (including preservation, display, and use) is a "promotion" of the views expressed? Is the HET response correct? Should we subscribe to it even if we don't think it is?
3. "Those who cannot remember the past are condemned to repeat it" On a utilitarian level (pace George Santayana) is suppression the best way of preventing it ever happening again?
4. But, of course, HET doesn't want us to forget the past. Forgetting the past and moving on is a strategy for overcoming grief. But HET doesn't want that. They want us to remember it in their way.
5. To achieve this, they certainly want to suppress hate speech now but also evidence of it from the past. Instead they want their understanding of the Holocaust to prevail and the documentation that upholds it to survive (presumably).
6. One is constantly surprised by how prescient George Orwell really was.
7. Doesn't it follow that we must avoid gathering and preserving evidence of hate now for the enlightenment of future understanding of our own time? If ideology shapes the past, why not the future?
8. Is it our job to submit to ideology in what we do or to strive to free ourselves from it? If we have the spittle for it.

If you want to be uncouth, you can substitute "party-line" for ideology. A not unrelated story in The Guardian suggests that climate science in Australia is now being corrupted by the political process. All this exposes the uneasy nexus between recordkeeping (all recordkeeping) and politics.

Natural Archives

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" ... >>

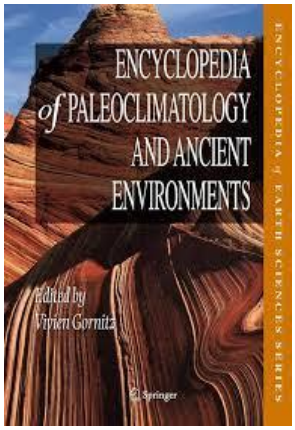
2019, November 12:

<<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 an earlier post I had a look at the use of colonial weather observations in relation to management of the Murray-Darling.

<<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.">>

Climate Refugees on Horseback



Paleoclimatology

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.
>
> …. 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.
>
> … "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.
>
> … 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.

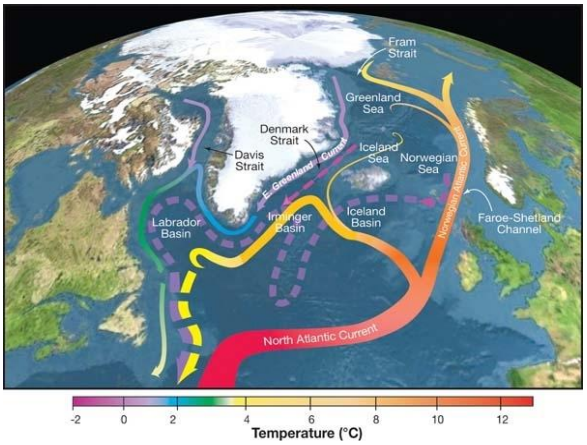
Some climate scientists theorize that they may discover additional warming when they incorporate these extensive records of weather between 1780 and 1850 or so, a period during which people already were burning some fossil fuels and clearing land of trees. They suspect documenting old temperatures may 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 ...

Recordkeeping and the Pandemic

2020, March 25: Lock down activities

<<Tim Robinson: Some of us are self isolating ... we'll need things to do ... Binge TV is a danger, but if you are going to do it what about things with a records/archives aspect. In my household we've become a bit addicted to Chinese and Korean TV on Netflix. One with records playing an important part is the Korean romantic comedy "The Rookie Historian". Other suggestions please.>>

<<Michael Piggott: ... Definitely add, *The Capture* screened on BBC One last year and being broadcast here by the ABC and also the entire series on ABC iview. The manipulation of CCCTV recordkeeping underpin's the plot and (I think) a compelling thriller murder mystery as well.>>

2020, March 28:

Special attention in the queues for toilet paper is not the only thing people of our age can look forward to, Michael. 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, 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, April 30:

<<Michael Piggott: I'm not surprised government archives have focussed on apps (though am I correct in thinking so far only in relation to social media?). They are now the preferred conduit for government-citizen and increasing business-client interaction - see here. That aside, Chris you are definitely not the only Australian (and not the only retired archivist) not to have a so-called smartphone. In an item from Melbourne University's 'Pursuit' earlier today, its authors noted:

> Across countries, phone ownership will vary, with the very demographic most as risk from COVID-19 perhaps being least likely to carry a smart phone – people aged over 60. Indeed, nine per cent of Australians don't own a smartphone, which translates to more than 2 million people. And children, who can also carry COVID-19, rarely have smart phones of their own.>>

2020, May 1:

<<Andrew Waugh: ... the discussions about the privacy implications of the app are steadily exasperating me - on both the government and privacy sides. Take this piece in the conversation today (https://theconversation.com/the-covidsafe-app-was-just-one-contact-tracing-option-these-alternatives-guarantee-more-privacy-137400) on alternatives to the government app. All of the alternatives are research ideas ... but they are not alternatives now. The pièce de résistance is an apparently serious suggestion that everyone carry around a pencil bluetooth recorder that can be anonymously handed in. My mind boggles at the thought that anyone could suggest that a such a non-essential completely new device could be developed, tested, fabricated in sufficient quantities for everyone (in Western countries?), and distributed in the middle of a pandemic. Really?

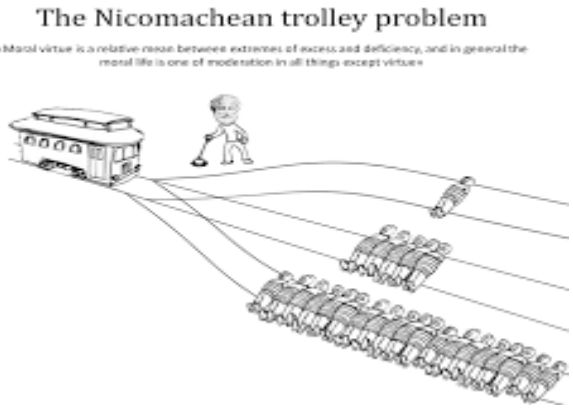
In the middle of this, otherwise excellent, discussion of the privacy implications of the app (https://www.salingerprivacy.com.au/2020/04/29/covidsafe-app-blog/) is a brief mention of an alternative called DP-3T ... unless I'm missing something, the suggested approach completely fails to scale. It depends on everyone in a region periodically ... contacting a centralised database to see if they have been reported as being a contact ... a reason why the central database needs your contact details (and hence is a privacy problem) is so that it can efficiently contact people to get tested. The question of scaleability vs privacy is at the heart of *any* alternative app.

... There are real privacy concerns - largely because of the actions the Federal government has previously taken on privacy. Rather than addressing these trust issues, it appears the Federal government is repeating the same mistakes *again*. I would have thought that the goal of the government was to get the app onto as many

phones as possible to keep transmission low (and to restart the economy … A big privacy problem is that the central database seems to keep your contact list if you upload it - apparently for 'medical research'. But retention of the contact list is not necessary for tracing transmission … Medical research is important - particularly into the virus - but is it more important at the moment than keeping transmission low? … this issue - pandering to the medical research stakeholders - is a major reason why the eHealth record system was a privacy shitfest.)

… While the government is *still* fuffing around worrying about the implications of releasing the code, it appears that no-one in the government realised that the Android version of the code can be easily decompiled by anyone. Someone did so. Their conclusion? It uses standard APIs and construction techniques, and is a pretty good effort at privacy with no obvious problems. The fundamental problem on both sides of the debate seems to be an unwillingness to focus on the immediate goal of keeping transmission low. On the government side, this means forgetting about issues and uses of the data that otherwise would be important. On the privacy side, this means accepting the app is not perfect, but may be good enough.>>

<<Joanna Sassoon: Thanks very much Andrew et al. And, since its Friday, here is Sammy J with his take on the subject below courtesy the ABC … >>



<<Debra Leigo: Interesting discussion on the IAM2000 Launch Webinar today, the attendees – I didn't hear how many but presume well over a couple of hundred and all or most IM Professionals – were polled on their uptake of COVID19 App. If I have recalled correctly:

- **5% Advocates**
- **?% Have Uploaded App**
- **?% Will Upload App**
- **36% Haven't decided**
- **20% Won't Upload**

Perhaps the panellists and/or moderators would like to comment?

<<Adrian Cunningham: The missing stats are:

- **30% already downloaded**
- **10% intend to download**

That means at least 45% will download of the cohort in question - and probably more given the percentage of undecided. If these stats were replicated across the nation then the Government's aim of 40% download will be exceeded.

David Fricker expressed surprise at the stats, though I was not sure if he was surprised because they were lower or higher than he expected.

Something I read recently from a behavioural economist argued that evidence suggests that only 3% of the population will voluntarily do anything for the greater good in any specific example if there is no direct personal benefit to themselves. Either that figure is wrong or a significant number of Australians feel that

they stand to personally benefit from downloading the app from a faster easing of the current restrictions on social and economic activity.>>

2020, May 2:

<<Debra Leigo: Thanks for the stats and comments Adrian. Can you also provide the attendance figure? I too, wondered at the direction of David Fricker's surprise. It seems to me that the CovidSafe App is becoming/has become as much a voting tool as a tracing tool, with the easing of restrictions dependant on the number of App downloads.>>

<<Adrian Cunningham: 460 people registered, but only 260 logged in. Don't know what happened to the other 200! Mostly they were from Australia and NZ, but I am told that there was a handful of people from further afield.>>

2020, May 3:

<<Andrew Waugh: A Guardian article comparing Covid-19 tracing apps. The most important take away is that almost no other country is doing this yet (despite the article headline). Singapore, China, and India are using contact tracing apps. A bunch of countries are looking to use the Google/Apple contact tracing API, but this does not appear to have been released yet let alone have apps written to use it. Another bunch of countries are tracing phone locations and using this data - which is less precise than contact tracing and leaks more data.

A further take away is this 'comparison' is almost content free in terms of the detail about what is captured in the various systems and why. Since the devil is in the detail, this means any 'comparison' is almost useless. Although it is pretty clear we wouldn't want to use the Chinese one. Many European nations are relaxing restrictions despite not having a contact tracing app in place. >>

2020, May 4:

<<Elizabeth C: I see that Iceland's app was not included in the Guardian article. What I liked about the page was the clear link to information about the protection of personal data when using the app.>>

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 6: Recordkeeping and digital preservation in a crisis

<<Andrew Wilson: FWD ... In the last couple of weeks, the International Council on Archives, International Council of Information Commissioners, ARMA, CODATA, Research Data Alliance, UNESCO, the World Data System and the Digital Preservation Coalition have developed a concise, shared and clear statement which we are now promoting through our channels ... We're calling on governments, businesses, and research institutions around the world to document their decisions and transactions now and for the future. Together we are making three calls to action:

- **Decisions must be documented**
- **Records and data should be secured and preserved in all sectors**
- **The security, preservation and access to digital content should be facilitated during the shutdown**

The full text of this joint statement is below and linked also with translations in French and Spanish ... Dr William Kilbride FSA Executive Director, The Digital Preservation Coalition>>

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 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.>>

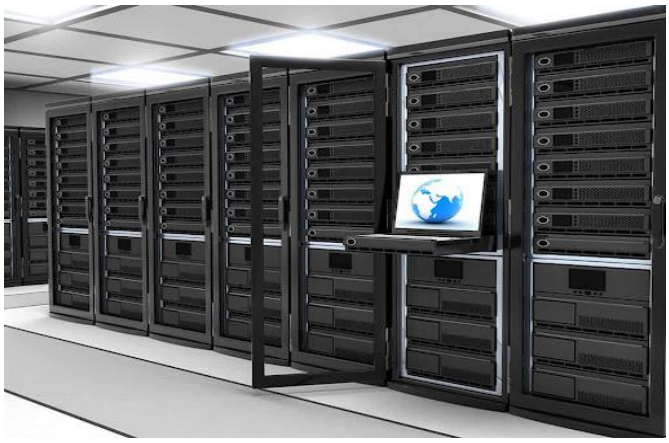
2020, May 31:

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, 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 …

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, February 16: Is storage a “core” IT requirement?

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.