Australian archives – a subject's perspective

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A scramble to depart

On 2 February 2009, I departed the judiciary after nearly thirty-five years' services. My departure was not entirely voluntary, being required by section 72 of the Australian Constitution. Added by referendum on 29 July 1977,[1] this provision had limited my judicial commission to my 'attaining the age of 70 years'. That I did on 18 March 2009. So I decided to go before I was pushed – but not much before.

As I had, by then, spent exactly half my lifetime in public offices, federal, state and international, I had naturally accumulated a huge quantity of records. Things were complicated by the fact that my primary offices were successively federal, then state, and federal again. At the conclusion of my initial service as a Deputy President of the Australian Conciliation and Arbitration Commission (1975–83), inaugural Chairman of the Australian Law Reform Commission (1975–84) and member of the Administrative Review Council (1976–84), and of the Australian Institute of Multicultural Affairs (1981–84), I had certain duties under the *Archives Act 1983 (Cth)* to deposit official records with the National Archives Australia (NAA). However, as well, on demitting those federal offices, I deposited a large collection of associated personal records with the NAA at the same time. These included diaries of professional appointments, dating back to my earliest years as an articled law clerk in Sydney; masses of personal

correspondence; records of the countless meetings I had attended and many that I had chaired; collections of materials from university governing bodies on which I had served; and records of various civil society organisations with which I had been associated – such as the NSW Bar Association, the NSW Council for Civil Liberties; as well as international bodies with which I had been associated – such as the Organisation for Economic Co-operation and Development (OECD) and Commonwealth Secretariat.

The occasion of my first deposit was my move, in September 1984, to the office of President of the New South Wales Court of Appeal. This is the second-highest ranking judge in the State of New South Wales. In due course, following my appointment to the High Court of Australia from 6 January 1996, a decision had to be made as to where the records of my state service should go. In the end, I decided to add them to the collection at the NAA. So, once again, the boxes were delivered. They were packed. The trucks arrived. And my deposit went off to the vaults of the Commonwealth, somewhere I knew not where.

As my 2009 exit day from the High Court loomed on the horizon, I again made contact with the NAA. Ms Shirley Sullivan, Manager, Personal Records, coordinated the biggest move of them all. Empty boxes were delivered once again to my judicial chambers in Sydney. Advice was tendered on the preparation of the records for transfer. Gradually all of my personal files were removed from my chambers in the High Court building in Canberra. Towards the very end, it became a great scramble. There was no negotiation with the exit date. It fixed an immovable deadline. All of us just had to conform.

So, in the midst of shifting my personal library from my court chambers to a new office in Sydney and clearing out my apartment in Canberra, which I sold, the staff of the NAA and my personal staff (associates) had to pack a large collection of boxes. They were labelled and duly numbered. The process was supervised by officers of NAA who came to my Sydney chambers: Iris Clair, Michelle Keogh and Gillian Wall. Everything was done in a happy and positive spirit. Truckloads of records were wheeled to waiting vans in the basement of the Law Courts Building in Sydney. Much of the burden fell on my last associates, Edward Brockhoff and Leonie Young, with occasional wise interventions by my long-suffering

personal assistant, Janet Saleh. The Big Move was finished just days before my retirement ceremony in Canberra on 2 February 2009. The Director-General of the NAA, Ross Gibbs, attended that ceremony to hear me pay tribute to the NAA and its officers.

Manipulating bowerbirds?

In an interesting article on the NAA published in the Melbourne *Age*, Gideon Haigh recorded that, when members of the Australian Parliament were invited to an NAA seminar on 'Your Place in History', they thronged in large numbers to attend.[2] The type of person who seeks, and gains, a leadership role in the government of a country, is likely to be something of a bowerbird. Some will be concerned to control the perceptions that history may have of the part they have played. In a sense, this may be a (usually) futile quest for a form of immortality. Or perhaps, a desire to manipulate the image that is projected into history. Yet even interesting characters will be disappointed to know that history does not much care. On its large canvas, there is, after a few years, room only for a selected few subjects. And there are only so many PhD students available to take on the burden of research, at least where the materials are assembled in boxes in a distant archival repository.

Some personalities obviously stand out in terms of biographical potential – prime ministers, a few generals in time of war, and characters whose careers collapse into infamy for one reason or another. Even famous judges, with varied careers (like the soldier-judge, Sir Victor Windeyer), have not yet attracted a biography. Indeed, in Australia, judicial biographies are comparatively rare.

In the United States, virtually all modern Justices of the Supreme Court have attracted biographers. That court is constantly itself under examination by scholars, such is its power in the land. But in Australia, there are few such studies. The bowerbird and would-be manipulator might have saved all those bus tickets and invoices in vain. They may lie undisturbed because no-one is sufficiently interested to undertake the burdensome task of accessing the boxes and writing on what they found.

In my own case, I knew that scholars were already at work accessing the records at NAA. A book, published in the week of my judicial retirement, focused on my judicial decisions.[3] A group of distinguished lawyers presented a collection of chapters drawing upon my published judicial opinions. As well, Professor AJ Brown of Griffith University is now writing a biography. He asked for, and received, my consent to full access to my archival records deposited with NAA. Every now and again, he surprises me with a copy of a letter (long since forgotten) that I wrote 30 years ago describing events, people and feelings with a freshness that the faint recall of old-age can never match.

In addition, Professor Brown has accessed other records in the NAA, such as the assessment of my studies at the Sydney Law School in the 1950s by Professor Julius Stone, who was a great influence on my intellectual development. For particular periods, as when I travelled overland with my partner, Johan van Vloten, in 1970 and 1974, I kept a detailed daily diary. Events were recorded there with much more intimate commentary than can be gleaned from exchanged correspondence. I often told myself that I should keep a diary of events in public office – all the circumstances and feelings. But the days were long. There never seemed to be sufficient time. So the diary has to be pieced together from dozens of appointment books, thousands of copy letters and albums of photographs assembled by my successive associates in the institutions in which I served.

In the High Court, and other superior courts in Australia, it has been conventional for judges to destroy earlier drafts of their reasons for judgment. I followed that convention until shortly before my retirement. Visiting my Canberra chambers one day, I showed Professor Brown the way in which my judicial opinions evolved over time. The evolution was secured by constant re-reading of the text, sometimes occasioned by later research, occasionally by responses to the opinions of my colleagues.

AJ Brown urged me to retain the several drafts (never fewer than eight and sometimes up to twelve) which explained the intellectual journey that each decision involved. I decided to take his advice. And so, in the last years of my service on the High Court, all the earlier drafts were retained with their hand-written amendments, additions, subtractions

and variations. The drafts of other Justices were still destroyed. But mine, after about 2005, were kept. The fiction that judicial opinions emerged Thisbe-like, final and perfect from the waters, is unrealistic. Researchers may have a legitimate interest to witness the emergence of my final opinions. Certainly, this happens in the Supreme Court of the United States. I see no reason why it should not happen in Australia. Looking at the first and final drafts will, I believe, demonstrate the truth of Lenin's aphorism: he who writes the first draft, generally dictates all that follows. The substance normally remains the same. Yet there may be a legitimate interest in scrutiny of the evolution to the final product. By convention, no records are kept of the post-hearing discussion among appellate judges in Australia. Only rarely do such details emerge into the sunlight.

Alternative on offer

As I was approaching my judicial demise, and literally putting my papers in order, I contemplated alternative repositories of the papers likely to be of greatest interest for future scholars, namely those that recorded my High Court years. One apparent disadvantage of the NAA repository is the distant location of its facilities and the practical impediment that this may cause for research, at least to hard-copy materials. Reflecting on this problem, I explored whether it might be more convenient for me to deposit those records with the National Library of Australia. From a time when I served on the Library Council of NSW, I knew that the National Library accepts deposits of important personal papers. During my High Court years, I twice recorded a conversation there (with Mr Peter Coleman) on recollections from the judiciary. These recordings (and their transcripts) are now also part of the holdings of the NAA.

The Director-General of the National Library (Ms Jan Fullerton) counselled me to keep the collection of my personal papers together. This might have been politeness, but it seemed like a good idea at the time, so I followed her advice.

Other alternatives were also contemplated. I knew that Prime Minister Whitlam's archives are substantially housed with the Whitlam Institute at the University of Western Sydney. Those of Prime Minister Fraser are

deposited with the University of Melbourne. Those of Prime Minister Hawke are with the University of South Australia. The last-mentioned university approached me to explore the possibility of my depositing my High Court papers with them. There were certain attractions to the idea. These included an efficient program for digitisation and for according my archives a special status.

However, in the end, I elected for the NAA substantially for reasons of keeping the collection together. It may sometimes be comparatively inconvenient for future scholars to track boxes down. That inconvenience may be reduced when the NAA's own program for digitisation of its records gets underway, as I hope. But, at least in my case, the entire records will be in the one place. Moreover, records generated after my retirement from the High Court can also be received there and kept together. As Professor Brown has demonstrated repeatedly to my surprise, the boxes at the NAA contain many forgotten jewels. The challenge for the researcher is to find them amidst the bulk of insignificant officialese.

Particular concerns

From the point of view of a subject, three aspects about the deposit of personal records with the NAA arise and suggest avenues for the improvement of the service.

CBD access

My records are held together in a repository in a distant suburb of Sydney. This necessitates a dedicated journey by a determined researcher and a measure of inconvenience and costs. There is a need for presenting boxes at an NAA facility in capital cities, to obviate journeys to the hinterland. Some such arrangements are, I understand, available in Melbourne. I believe that the development of such facilities in Sydney is under active review.

Digitisation

The digitisation of personal records is a new and urgent priority for NAA. In part, this is because of the need to expand access to records

originally deposited in hard copy. The NAA has already facilitated access to records of war service. According to Gideon Haigh, this is part of a 'dedicated effort to enfranchising distant users'. In 2008, more than 2 million documents were accessed by the public online. The NAA soared to the top of Australia's Sensis search engine when it made available 350,000 military service records.[4] Such records are bound to have frequent usage.

The NAA must obviously be selective and discerning in its digitisation program. However, allowing for judgment, it would be highly desirable to increase the pace of digitisation of personal records, including my own. This would be the best way to enhance the access not only of professional historians but also of occasional researchers, students and the public generally. Additionally, the fact that so many personal records are now maintained in digitised form, means that the archives of the future must address issues of access, privacy, defamation, sensitivity and retention. On the whole, digitisation promises a far greater relevance to the record kept by NAA than has been the case in the past.

Non-documents

In addition to documents (reports, draft opinions, letter, and so on), my own deposit contains other materials presenting special challenges. These include DVD and film records extending back to my early years in the Australian Law Reform Commission. They also include old tape recordings involving even my dictation of judicial opinions, radio broadcasts, correspondence, and the like. A large number of photographic albums have been deposited, mostly relating to personal events, court scenes, university occasions and international conferences. Priority attention to the digitisation of these photographs would be worthwhile.

The photographs of court meetings, in-chambers events and social occasions will give insights into the operations of Australia's highest courts that would rarely been seen by other citizens. None of them portray the courts, or their personnel, in an adverse light. By and large, the courts and their personnel are, as they appear to the public to be, serious-minded, conscientious officials who help maintain the rule of law for a continental nation.

Some of the foregoing materials (including the photographic and film records) will have a value under the Cultural Gifts Program. The NAA has offered to have the gifts valued for appropriate benefits to me as the depositor. Already, some of my photographic deposits have been utilised in a display of NAA materials relevant to Australia's judicial institutions. I welcome this. As the records are digitised, the prospects of interesting and unique photographic exhibitions present themselves for the future. There are few records of a similar kind for the High Court in earlier generations.

When I recorded my Boyer Lectures in 1984 on *The Judges*,[5] a diligent search of Australia's sound archives failed to produce a recording of the voice of Sir Owen Dixon, one of Australia's greatest judges. We have been neglectful in preserving these aspects of historical personalities. I hope that my records will, one day, assist in repairing this defect. A lot will depend upon the resources available to the NAA to make this possible.

Period of access

Under the original arrangements for the NAA, an 'open period' for records follows the British convention of fifty years. This convention was part of the tradition reflected in the United Kingdom's *Official Secrets Acts*. Access to public records was a privilege to be granted; not a right that could be asserted.

Under the McMahon Government in Australia in the early 1970s, a protocol for the release of records classified as 'secret', was published. It reduced the prohibition to thirty years. Under the leadership of Senator John Faulkner when Special Minister of State, a proposal was made for substituting an 'open period' for such records after twenty years.[6]

I support the reduction of the period of prohibited access. This is more in keeping with modern attitudes to the entitlement of citizens and the accountability of public officials. The passage throughout Australia of freedom of information Acts, federal and state, has encouraged a new and more open culture of public administration, as have other developments of administrative law. This is a culture more in keeping with developing legal notions that the sovereignty of Australia

rests ultimately in the people, as electors; not in the Crown or the government. Ultimately, public records are the records of the people.[7]

But what of personal papers that are voluntarily deposited with the NAA, and should a subject consider depositing intimate personal records? Like many public officials, in my own papers, I hold some correspondence between myself and other judges, or other persons, that are personal and have some potentially historical interest or value. Occasionally, these documents recall differences, strongly felt at the time, which have been overtaken by the passage of years and later perspectives. Would the publication of these, during the lifetimes of those involved, fracture relationships that have been repaired? Would they rekindle past hurts or differences? Is that a reason for keeping them from the NAA? Or keeping them inaccessible for a time? Should they be deposited; but under lengthier periods of embargo from public access? Should access be provided, limited to particular usage or particular persons?

In my own case, correspondence of the kind mentioned will ultimately be deposited by me; but under limitations designed to reduce needless hurt or embarrassment. The excluded collection is small. But it should not, in my view, be destroyed. The ultimate manipulators of public perceptions are those who attempt to expunge records relevant to important public assessments. The diaries of Sir Owen Dixon,[8] for example, cover the years 1911, 1929 and 1935–65. Reportedly, they reveal in Dixon a *persona* consistent with the public image: intensely hard-working, civic spirited, sceptical, ironical, dry in wit and devoted to his family from whom his work constantly separated him. He was an Anglophile who, like most Australians of his generation, supported White Australia. He occasionally revealed prejudice against minorities. It seems likely that the diaries were not intended for the eyes of 'all and sundry'.[9] On Dixon's death, they were received by the National Librarian. They record Dixon's interaction with government, not all of which would accord with current conventions and expectations. The diaries raise an issue whether detailed personal information on judges could damage their reputations by post-service revelations. Judges are, after all, only human. The public, perhaps, like to think of them as better than that.

I retain some personal letters and other records, not deposited with the NAA, that record intimate aspects of my own past life, such as letters to long dead and distant friends with whom I was once intimate. Are these of legitimate interest to others? In the short run, certainly not. But in the long run, for a rounded and truthful picture, possibly so. A subject who seeks to control perceptions of his or her life on the part of later inquisitive historians would probably destroy all such personal records. Yet something held Sir Owen Dixon back from destroying his diaries. It is the same force that holds me back from destroying my most personal records. In both our hearts, we knew that these are part of us and, if fully understood, not a source of shame or belittlement; just an indication that we have lived a human life, like most others.

In the result, I will probably take the same course as Dixon and leave such records for any in the future who may be interested. In this way, many of the potential subjects of future curiosity find presentation of the whole truth more important than control of future perceptions.

The immediate practical problem that a subject faces is whether to deposit such materials under embargo or to leave them entirely to the future. Sometimes family members have been known to destroy such precious records. Some of the priceless diaries of Queen Victoria were destroyed by her youngest daughter following her death in order to protect her reputation and that of family members. Princess Margaret is said to have destroyed most of the correspondence between her mother, then Queen Elizabeth the Queen Mother, and Diana, former Princess of Wales. Instances of such cases are legion.

Denouement

A recent article published in *The Atlantic*[10] describes records that have been kept at Harvard University in the United States since 1937. The records comprise a study of Harvard sophomores, all male. They track the lives of the subjects, one of whom was President JF Kennedy. They record the ups and downs of their lives. The records, being contemporaneous, offer a profound insight into the human condition of these persons. Many of the men's lives were worthy of Tolstoy or Dostoyevsky.

One man only acknowledged to himself in his late 70s that he was homosexual. Others had very serious problems with personal intimacy. Others suffered greatly as a result of their war service. Some simply recorded that they found it intolerable being loved. A few were recorded as dying of alcohol disease. Many were well-adjusted. Some could not imagine that their lives could have been better.

A sad point of the study was that the long-time keeper of the records, a psychiatrist but a type of archivist, George Vaillant, came to recognise that he himself was afflicted with a condition that may not be unknown to archivists:

> Recently I asked Vaillant what happened when the men died. 'I just got an e-mail this morning from one of the men's sons', he said, 'That his father died this January. He would have been 89'. I asked him how it felt. He paused, and then said, 'The answer to your question is not a pretty one – which is that when someone dies, I finally know what happened to them. And then they go in a tidy place in the computer, and they are properly stuffed, and I've done my duty by them. Every now and then, there's a sense of grief, and the sense of losing someone, but it's usually pretty clinical. I am usually callous with regard to death, from my father dying suddenly and unexpectedly'. He added, 'I am not a model of adult development.'
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> . . . Only with patience and tenderness might a person surrender his barbed armour for a softer shield. Perhaps in this, I thought, lies the key to the good life – not rules to follow, nor problems to avoid, but an engaging humility, and earnest acceptance of life's pains and promises. [11]

The secret that lies in the personal records of public and also private individuals is occasionally undiscoverable. Sometimes it necessitates a lot of searching. The object may be to get to the bottom of another person's life, so far as contemporaneous records can ever reveal that. Others will be tempted by the search for scandal; for gossip; foibles; error. Yet whatever the purpose, the records retained in the NAA permit those who come afterwards to 'squeeze that lemon'. From the drops may appear bittersweet stories of an individual human life. However,

in the nature of the records kept, there may also appear reflections of the life of an unusual country, grappling with its inconvenient geography, chequered history and derivative culture to find itself in the lives of those who contributed, in whatever way, to its story.

Endnotes

[1] *Constitution Alteration (Retirement of Judges) Act 1977* (No. 83) (Cwlth).

[2] G Haigh, 'For the record', *Age,* 12 September 2009, p. 20.

[3] Ian Freckleton and Hugh Selby, *Appealing to the Future: Michael Kirby and his Legacy,* Lawbook Co, Pyrmont, NSW, 2009.

[4] G Haigh, 'For the record', p. 20.

[5] MD Kirby, *The Judges,* ABC Boyer Lectures, 1984.

[6] See National Archives Advisory Council media release, 'National Archives Advisory Council welcomes changes', issued 24 March 2009, available at *<http://www.naa.gov.au/about-us/media-releases/2009/reforms-to-the-archives-act.aspx>,* accessed 25 October 2010. See also Australian Law Reform Commission, Administrative Review Council, *Open government: a review of the federal Freedom of Information Act 1982,* Australian Government Publishing Service, Canberra, 1996.

[7] *Kirmani v. Captain Cook Cruises Pty Ltd [No.2]* (1985) 159 CLR 351 at 441–442; *Breavington v. Godleman* (1988) 169 CLR 41 at 123; *Leeth v. The Commonwealth* (1992) 174 CLR 455 at 485–486; *McGinty v. Western Australia* (1996) 186 CLR 140 at 230.

[8] P Ayres, 'Dixon diaries', in AR Blackshield, M Coper and G Williams (eds), *The Oxford Companion to the High Court of Australia,* Oxford University Press, South Melbourne, Victoria, 2001, pp. 222–24. The diaries are held with the Papers of Sir Owen Dixon, 1886–1986, National Library of Australia, MS 4704449.

[9] ibid., p. 224.

[10] JW Shenk, 'What makes us happy', *The Atlantic,* June 2009, p. 36.

[11] ibid., p. 53.