

Submission to the Interdepartmental Working Group on Cultural Property prepared by the Australian Society of Archivists

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Author's Note: In November 1980, the Ministers of Business and Consumer Affairs and Home Affairs agreed to set up an Inter-Departmental Working Group to examine aspects of the nature and treatment of cultural property. The terms of reference for the Working Group were:

“To review, and to submit recommendations to the Government on, the nature of cultural property which is of national or historical importance to Australia and measures aimed at controlling and protecting this property, including possible legislation.

The Working Group will also examine and report on related matters, such as the import, export and restitution of cultural property.”

Submissions were invited in an advertisement in the press in early August 1981, with a deadline of 31st August. Neither the Society nor Australian Archives had been approached directly for a submission by the Department of Home Affairs and Environment. The A.S.A. Executive decided immediately that a submission should be prepared, and this was despatched shortly after the announced deadline. Submissions were in fact accepted until the end of 1981, and the Inter-Departmental Working Group is presently preparing a Green Paper, rather than a report, because of the paucity of response to date, hoping to attract more public attention.

The Society's submission was prepared by Elizabeth Nathan, with assistance from other members of the Executive.

Introduction

The Society is anxious to draw attention to three particular aspects of the preservation of movable cultural property in Australia.

1. The importance of archival records, public and private, in any consideration of cultural property.
2. The present inadequacies of Australian legislation concerning the safeguarding for future generations of cultural property of national importance as regards:
 - (i) the recovery of publicly-owned material which is out of custody;
 - (ii) the preservation of privately-owned material of historical value;
 - (iii) the protection of material from export overseas; and
 - (iv) assistance to publicly-funded institutions for the acquisition of material.
3. The need for greatly increased support of facilities for materials conservation and restoration, including the provision of adequate storage for those objects identified as part of the nation's cultural heritage.

Part A. Definition of cultural property

1. Any definition of movable cultural property must include archival records, public and private, whose preservation is important to the nation as a whole. Written records are as much in need of physical and legal protection as are other cultural objects, and tend to have been overlooked or underrated in most public discussion of our national heritage.
2. Ever since writing replaced oral transmission of information — i.e. throughout recorded history — written records have constituted the memory of society, and arrangements for their preservation have been the hallmark of civilization. So important is the rule of written records that the significance of other forms of cultural property — artistic, historical, social, scientific, industrial and archaeological — is considerably diminished, or altogether lacking, if the written records documenting it have not been preserved. For instance, the recovery and restoration of Cook's cannon from H.M.S. *Endeavour* would have been impossible had there not been kept documents recording their loss, their location and their identity. The basic information required for the nomination of a site or building for the Register of the National Estate must come, directly or indirectly, from archival sources of

written records. An unnamed, unattributed, unrecorded and unidentifiable work of art, regardless of its intrinsic merit, does not have the same value as one that can be placed in its historical context by means of archival records.

3. It must however be emphasised that archival records do not consist solely of written records. Any kind of movable property may form part of the archives of an organisation, or of an individual, including:
 - works of art (e.g. the paintings and sculptures commissioned by the Historic Memorials Committee)
 - books (such as those collected by a person during his lifetime)
 - machinery (e.g. Dr. C.E.W. Bean's typewriter)
 - photographs (from public or private sources)
 - maps, plans and charts (hand-drawn or printed)
 - models (e.g. the Federal Capital site)
 - cinematic films (government or commercial)
 - sound recordings
 - scientific collections (e.g. the Commonwealth Palaeontological Collection)
 - ethnological collections (such as those in the Australian Institute of Anatomy)
 - clothing (e.g. King O'Malley's Masonic apron)
 - vehicles (e.g. an old A.B.C. outside broadcast van)
 - submarines and aircraft (such as those in the Australian War Memorial)
 - coded storage devices
 - magnetic tapes or discs
 - printed leaflets
 - stamps and coins (archives of the Post Office or the Mint)

4. Archives are kept for their administrative, constitutional, legal, evidential, historical, artistic, scientific, industrial or social significance. Above all, they are preserved for their informational content, which is conveyed partly by the subject matter and partly by the original order in which the documents and/or objects were kept. The value of archival records is diminished if they are split up and dispersed, unless the relationship between the different parts is very clearly understood and documented. Where archives are concerned, no archivist would question the proposition that the whole is greater than the sum of its parts. An archival record out of its context may become no more than an historical curiosity. It is therefore submitted that a meaningful

definition of cultural property should take into account not only the forms of such property, but also its content and its context.

5. A National Register for Archives has been proposed for Australia for quite some years, and is to be a responsibility of Australian Archives under the legislation now before Parliament.¹ It is intended to cover government archives, Commonwealth and State, and may also include material in other archives, including private ones. There is further provision for it to contain particulars of "other archival resources relating to Australia", which could include overseas material of interest to Australians, and presumably important archival material held by private individuals. If such a project were to be given adequate resources and staff, it could go some way towards helping to safeguard Australia's archival resources for future generations, especially if legislation were to make notification of change of ownership mandatory, as is the case in France, for instance.²
6. It should be noted that at present the National Library of Australia produces a *Guide to Collections of Manuscripts relating to Australia*, which lists archival and manuscript material from non-government sources. It has been planned as an aid to researchers, rather than as a definitive list of material of national importance. The sort of register proposed to safeguard such material would have more in common with the Register of the National Estate, and include all kinds of records and objects, government and non-government, of cultural importance.
7. In this connection, it should be noted that archival documents of great importance to posterity do not necessarily have high visual appeal. A great deal of Australia's cultural heritage, particularly of the twentieth century, consists of typescript or duplicated documents on poor-quality brittle paper. Past practices of picking out "pretty" documents for preservation have resulted in unfortunate and avoidable gaps in our historical record. It is therefore important that any definition of cultural property should emphasise the integral nature of archival records. It is also imperative that the fragile nature of such material should be recognised, so that steps to preserve it can be taken before it disintegrates.

Part B. Safeguarding cultural property

I. Legal considerations

1. All Australian States have legislation providing in some measure for the proper care and disposal of government records. The relevant Acts of New South Wales³, Queensland⁴, South Australia⁵, Victoria⁶ and

Tasmania⁷ all contain clauses intended to compel restitution of public records (normally defined to include objects as well as documents) which have passed into private hands. Those of New South Wales⁸ and Tasmania⁹ specifically prohibit the export out of the State of any such records.

2. The proposed Commonwealth legislation makes it an offence to transfer a Commonwealth record out of custody¹⁰, but confers no special powers of recovery, unlike most of the State Acts. Presumably the Crown could take legal action to recover such records under property law, if it chose to do so, since it can be argued that private ownership of official documents is invalid, and that there is no time limit to the Crown's legal rights.¹¹ Whether such an action would succeed is another matter.
3. When in 1963 the Archives Office of Tasmania attempted to use its legal powers to recover some nineteenth-century Convict Department records from a private museum, the case was lost because the court would not accept that the documents were public records within the meaning of the Act,¹² despite clear archival evidence of their official provenance.¹³ This led to a new Archives Act in Tasmania. Two State Acts, those of Queensland¹⁴ and South Australia,¹⁵ attempt to place the onus of proof that such a record is not official on the defendant. It appears that those clauses have not yet been tested in the courts.
4. If the power of recovery is weak for government records, it is virtually non-existent for private records. Because of the nature and quantity of archival and manuscript records, theft from an institution may not be discovered for a long time — not, in fact, until the item turns up for sale — and is therefore well-nigh impossible to prove. Loss of documents by theft from archives, museums and manuscripts libraries is an increasing problem in the United States, to the point where elaborate security systems have had to be installed by institutions ill-able to afford such expenditure.¹⁶ With the increasing interest in Australiana, and a rising market in historical documents, a similar trend in Australia is not improbable, and our institutions are considerably worse-funded than their American counterparts.
5. The public ownership of public records is generally accepted, even if individual cases are hard to uphold in law. Most of our State Archives also function as collecting institutions and take in private records of historical interest. The proposed Commonwealth legislation¹⁷ allows Australian Archives to take into custody records which form part of "the archival resources of the Commonwealth", defined fairly widely to

include all sorts of historical material (with specific exemptions for State or Territory-related material) but does not allow for acquisition by purchase, unlike the Acts relating to other institutions set up to acquire and preserve cultural property, such as the Australian War Memorial Act, the National Library Act,¹⁹ the National Gallery Act²⁰ or the Museum of Australia Act.²¹ It is quite possible, however, that records which have strayed out of official custody may have to be purchased, or their innocent owners compensated, in order to get them back.

6. Legislation which attempted to compel the deposit of privately-owned records in custodial institutions would be doomed to failure in a democracy,²² as well as being undesirable for a number of reasons. But legislation to prevent the export of nationally important cultural property should be introduced, along the lines of that in France,²³ where such items are classified, voluntarily or compulsorily. Free sale is permitted within the country, providing the responsible Ministry is notified of change of ownership, but export is strictly prohibited. In Australia, Customs regulations were altered in 1975 to prevent the export of one such item (Statutory Rule 19 of 1975) but the prohibition was confined to records or objects connected with the discovery, early settlement or exploration of Australia, later that year amended (Statutory Rule 173 of 1975) to "early exploration", thus weakening its effect still further. There are many valuable items of cultural property which have nothing to do with discovery, early settlement or early exploration, whose possible export should also be prevented. The establishment of a Register would assist in such an enterprise, in that it should allow items which need such safeguards to be easily identified.
7. Institutions with active collecting policies attempt to locate and acquire private records, with the aim of making them accessible to the public, present and future. Many owners can be persuaded to donate such records, but the financial rewards of the private market are increasing, and may be well beyond what most institutions can afford. Returns in the market are greater if items are sold individually or in small lots, thus breaking up the collection and destroying a large part of its historical or social significance. Moreover, material that passes into the hands of several private collectors, in Australia or overseas, is generally lost to the public.
8. Archivists and manuscript librarians holding non-government records in Australia have noted with concern the situation prevailing in the United Kingdom,²⁴ where the lucrative international market for

historical manuscripts and other cultural objects has prompted the withdrawal from archival custody of long-term deposits of private archives, their sale value considerably enhanced by the years of arrangement, description, cataloguing and conservation lavished on them by libraries and county record offices. A normal dealer's stipulation is that any extant copies, including security microfilm copies, must be destroyed before sale. In one of the worst cases, artworks and letters were sold in small lots, the parchments went to make fashionable lampshades and the registers, account books and so on were pulped.²⁵ British institutions have sometimes succeeded, by strenuous efforts and public appeals, in buying back parts of such collections. Few Australian institutions would have the resources even to attempt to compete in today's market for cultural material of any significance.

9. In the United Kingdom, attempts have been made to use taxation incentives, along with a government-controlled Heritage Grant and funds subscribed to by groups of interested individuals, to assist important private collections to be purchased or retained by public institutions.²⁶ It is suggested that the Commonwealth Government could look towards improving the situation in Australia by setting up the mechanism for a publicly-run trust fund through which tax-deductible money could be collected or solicited for the purpose of buying for the nation items of cultural property of national significance which are at risk, and depositing them in an appropriate institution.
10. Such a fund would of course apply to all forms of movable cultural property. It should however be noted that archival records differ from other cultural objects in one important respect. Museums, libraries and art galleries tend to gather representative collections, or specialize in particular areas. They may exchange items with other institutions, inside or outside the country, thereby augmenting and improving their holdings rather than diminishing them. In contrast, archival records, public and private, are of their nature unique and must be maintained in such a fashion as to preserve their integrity, so that historians and other users can deduce the maximum information from them. The same basic principles apply to archives as to archaeological sites, in that knowledge of the precise location and order in which objects were found is more important than the individual nature of the objects, however beautiful or valuable they may be; and once that order is disturbed, it cannot be restored.
11. Archival institutions may exchange copies of particular records,

thereby making material available to a wider research public; collections may even be split between two institutions, but along functional lines, so that the order is not disturbed; original records may be transferred to another institution or country, as Australia has given records originated in Papua New Guinea from 1885 to the Papua New Guinea government, retaining microfilm copies. But the dispersal of individual documents or groups of papers to a number of different owners is always to be avoided and usually results in an irreversible diminution of the historical and cultural value of the records, although not, unfortunately, their commercial value.

12. It should therefore be clear that any legislation contemplated to prohibit the export of certain classes of cultural property must take into account the nature of archival records. Age is not a criterion alone, nor is monetary value. Legislation could probably aim to prevent all trafficking in public records, given the Crown's inalienable ownership, and thereby prohibit their export totally. It may be possible to institute by legislation a system of scheduling cultural property of national importance, in the way that buildings and sites are scheduled as part of the national estate, so that objects or collections so scheduled would be prohibited exports.

II Physical protection

1. The definition of cultural property given in Article 1 of The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954,²⁷ includes "buildings whose main and effective purpose is to preserve or exhibit . . . movable cultural property", such as museums, large libraries and depositories of archives. Consideration should be given to wording any Australian definition to make it clear that arrangements to safeguard movable cultural property must include the buildings which house it.
2. Armed conflict is one of the hazards facing those responsible for the preservation of cultural property. Other hazards, such as natural disasters — floods, fires and cyclones — and adverse environmental factors — humidity, heat, fungi, insects and industrial pollution — present comparable and more frequent problems. The principal safeguard against these hazards is secure and suitable storage in properly designed buildings.
3. The provision of adequate storage is necessary for two main purposes:
 - (i) Cultural property must be protected from theft, deliberate or

accidental damage, careless handling and, in the case of written records, alteration or forgery.

- (ii) Cultural property needs protection from deterioration caused by temperature fluctuation, excessive humidity or dryness, moulds, airborne acids and insects.
4. Paper and other vegetable-based materials are particularly at risk from insects, moulds and temperature fluctuation. Mineral-based materials as well are affected by humidity and acidity. Protection of all kinds of materials entails the provision of air-conditioned temperature- and humidity-controlled storage areas, fumigation areas and adequate laboratory facilities for trained materials conservation staff. Buildings must be designed to be flood-proof, fire-proof and cyclone-proof, as far as possible. Adequate staff and resources must be provided so that supervision and security measures are effective, and so that items coming into custody can be properly listed and kept under rigorous intellectual and physical control.
5. It is submitted that consideration of legal controls to protect our cultural property must go hand-in-hand with the provision of proper physical safeguards. Many cultural objects of world heritage have survived only because they were removed from their countries of origin and properly preserved in more enlightened areas. In terms of materials conservation, Australia is still an underdeveloped country. Prohibition of export of important cultural property would be quite useless if the objects were to be allowed to deteriorate beyond restoration at home. Efforts have been made in recent years to install or upgrade conservation facilities in major institutions. Conservators are now being trained in Australia. But what has been achieved to date succeeds mainly in pointing up how much there is still to do. In some cases, laboratories have been provided, but cannot be staffed because of cut-backs. Institutions produce estimates of conservation and restoration work required on their records which run to thousands of man-years per institution. Modern materials present in general greater problems of conservation than do those of earlier times. For instance, greater concern was expressed recently in the United Kingdom for the condition of fragile World War II records than for the Domesday Book.
6. The Society of Archivists would particularly like to urge the Interdepartmental Working Group to give careful consideration to submissions received from bodies concerned with materials conservation, because of the vital nature of their work in safeguarding Australia's cultural property.

Appendix (Part A) 'Records' and 'Archives'

The words "record(s)" and "archive(s)" can on occasions be used interchangeably, but may also be used to mean different things. Some of the distinct meanings are listed in this appendix.

- archives: (i) the body of records created by an organisation in the course of its activities and retained (see also records (i))
- (ii) an institution set up to have custody and maintenance of such a body of records
- (iii) the body of records created and/or collected by an individual in the course of his/her life
- (iv) an institution set up for the purpose of collecting and preserving the archives of various organisations and individuals
- (v) the totality of records held by either kind of institution
- archive: (i) a single item from any body of archival records (see also record (i))
- (ii) a collection, usually of a single form of record, brought together for the purposes of preservation and research (e.g. National Library Film Archive)
- record: (i) "a document . . . or object . . . that is, or has been, kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing" (Commonwealth *Archives Bill* 1981). It may therefore be used to mean the same as archive (i).
- (ii) a document etc. which fails to become an archive, because it is not considered worthy of permanent preservation (all archives are records, but not all records are archives)
- records: (i) as archives (i). A Public Records Office and a National or State Archives have the same function and hold the same kind of material.
- (ii) the totality of documents or objects created or collected by an organisation before the processes have taken place which eliminates those which are not to be retained permanently.

FOOTNOTES

1. Commonwealth of Australia, *Archives Bill*, 1981, S.55
2. *Studies and documents on cultural policies: Some aspects of French cultural policy*, UNESCO, 1970

3. New South Wales, *Archives Act*, 1960
4. Queensland, *Libraries Act*, 1943, S.4(i)
5. South Australia, *Libraries and Institutes Act*, 1939, S.32(1)
6. Victoria, *Public Records Act*, 1973, SS.16-18
7. Tasmania, *Archives Act*, 1965, SS.16-18
8. New South Wales, *op.cit.* S.18(1)
9. Tasmania, *op. cit.* S.11(1)
10. Commonwealth of Australia, *op cit.*, S.26(1)
11. T.R. Schellenberg, *Modern Archives. Principles and Techniques*. 1945 University of Chicago Press, pp.124-5
12. Tasmania, *Public Records Act*, 1943
13. P.R. Eldershaw, "The Tasmanian Archives Act, 1965", *Archives and Manuscripts*, Vol.3 No.4 May 1967
14. Queensland, *op. cit.*, S.14(iii)(i)
15. South Australia, *op. cit.*, S.32(3)
16. *Archival Security Newsletters*, Jan.1976-July 1978; *Society of American Archivists Newsletter*, Jan 1976-July 1978
17. Commonwealth of Australia, *op. cit.*, S.5(1)(f) and (g); S.6(1)(c)
18. Commonwealth of Australia, *Australian War Memorial Act*, 1980, S.6(2)(a)
19. Commonwealth of Australia, *National Library Act*, 1960-1973
20. Commonwealth of Australia, *National Gallery Act*, 1975
21. Commonwealth of Australia, *Museum of Australia Act*, 1980, SS.6-7
22. See discussion in R.C. Sharman, "Victory in Victoria. An outsider's comments on the Public Records Act, 1973, of that State", *Archives and Manuscripts*, Vol.5 No.4 August 1973 p.86
23. UNESCO, *op. cit.*
24. T.I. Rae, "1. Ownership and Archives: The Way Forward" and V.W. Gray, "2. Ownership and Archives: The Way Forward", *Archives*, Vol.XIV, No.63, Spring 1980, pp.183-4 and 189-191
25. Verbal information
26. T.I. Rae *op. cit* pp.184-185
27. A. Noblecourt, *Protection of Cultural Property in the Event of Armed Conflict*, 1958, UNESCO, Paris