

# REFLECTIONS ON EASTWOOD'S CONCEPT OF DEMOCRATIC ACCOUNTABILITY AND CONTINUITY

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*Eastwood's perception of the role of archival authorities in maintaining the evidence of society's actions and thus contributing to democratic accountability and continuity is explored in the Australian context of accountability. Despite political and legislative initiatives to strengthen public accountability in the early 1980s and expectations that better quality recordkeeping would result, evidence of the lack of accountable recordkeeping practices, associated with the accountability crises of the late 1980s, mounts as cases of government and corporate corruption are scrutinised by Royal Commissions, Inquiries and criminal investigation teams. Managerial constructs of accountability reduce it to a set of management techniques that emphasise institutional accountability in terms of quantifiable program objectives. Furthermore public accountability is being undermined by the privatisation and corporatisation of government authorities and functions. This is occurring within the general failure of the Westminster system of government to guarantee the accountability of the executive to parliament and ultimately the public. Some Australian public archival authorities are advocating that they play a stronger recordkeeping watchdog role, especially through early interventionist powers in relation to disposal. The current approach of Australian Archives is analysed in its legislative and operational environment.*

### **Notions of accountability in the Australian context**

Accountability has become a vogue word which needs to be defined contextually or it loses its meaning by overuse or generality. It has been used in a variety of political, constitutional, legal, financial, institutional and sometimes ethical and moral contexts. Ian Temby QC, Head of the New South Wales' Independent Commission Against Corruption (ICAC), has defined it in a government context, as that which 'reflects and reinforces a value system in relation to government and administration which is solid and good . . .'.<sup>1</sup>

In the political and governmental arena the climate changed from the early 1980s emphasis on providing for public accountability through new processes of open government, including Commonwealth and State Freedom of Information Acts, to the late 1980s narrower focus on institutional accountability to the executive for policy formulation and program implementation through performance evaluation and audit procedures. The administrative law framework meant to provide a wider accountability to Parliament and to the general community remains, but its effectiveness in relation to accountability of government institutions to the public in general, as opposed to individual members of the public in their role as clients of government services is questionable. Watchdogs such as ICAC and Royal Commissions on corruption act as external public accountability controls, but they act after the event. Legislative accountability, that is the need to fulfil statutory requirements, is another aspect of accountability, one which impacts on government, business and community organisations, essentially to control their financial affairs, but often translated into retention periods for records necessary for possible litigation.

In the wider constitutional sense public accountability is fundamental to the Westminster parliamentary system adopted by the Commonwealth of Australia and the States. All executive agencies are held accountable, through the Minister responsible, to parliament and through parliament to the people, for the manner in which they exercise their responsibilities. However, ministerial responsibility has been reduced in the current business enterprise style of government to measuring management performance. Managers of public bodies provide detailed information about past and present financial activities on which parliament and ultimately the taxpayer can judge their performance.<sup>2</sup> Thus institutional accountability is measured in financial terms.

This reductionist notion of accountability is essentially a management tool rather than an aid to parliamentary or external scrutiny.<sup>3</sup> Despite this climate there are those who have tried to give institutional or organisational accountability a moral tone, as Ian Temby declared '... to whom and in what manner, and with what

effect a public official or public institution is made to answer for the discharge of its responsibilities'.<sup>4</sup> Institutional accountability thus takes on the face of morally and legally acceptable organisational behaviour coupled with financial aptitude.

Public accountability is under further threat from the privatisation and corporatisation of many government instrumentalities. Privatisation used in the widest sense to include not only the contracting out of government services and the sale of government assets and enterprises, but also the notion that services which can best be performed by the private sector are left exclusively to the private sector, in most countries has resulted in minimum public accountability and general secrecy. Privatised bodies are known to place less emphasis on social obligations.<sup>5</sup>

### **Eastwood on archives, democratic accountability and continuity**

Terry Eastwood has asserted that 'the interdependence of institutions across the illusory public and private boundary creates an interdependence among archives and archivists pursuing the ideal of democratic accountability and continuity'.<sup>6</sup> This grand aspiration for archivists derives from a particular view of the development of archival institutions and the values ascribed to archives as records. It is rooted in the Canadian experience of the 'total archives' in which national, provincial and municipal archival authorities acquire both public and private records within their respective territorial jurisdictions and theoretically co-operate with university, church, business and corporate archives in order to preserve records of all significant human effort.<sup>7</sup> It is a societal accountability in which all human action can be made accountable through the evidentiary nature of the archival document.

Eastwood explored his notion of archives as arsenals of democratic accountability and continuity with reference to three classic ideas on the value of archives which can also be used to characterise the phases in the development of archival institutions, that is archives as arsenals of history, administration and law; concepts which attempt to simplify the complex interaction these disciplines have played in the evolution of archival institutions and in the uses to which archival records have been put over the centuries. In fact as a sequence they would not apply to most European countries and as Eastwood indicated himself did not develop in that sequence in Australia. Nevertheless they are concepts which most archivists would identify as relevant to the role of an archival institution and to the purposes for which archival documents are created and kept. Accountability coupled with continuity provides a composite view of archives as society's memory.<sup>8</sup>

As Eastwood elaborated his view further in his article he separated out the historical uses of archives, linking the notion of accountability with the concepts of archives as foundations of law and

administration. Although he admitted that archivists work within a political environment over which they have little control, in his view the provision of democratic accountability through recordkeeping is not set within a political framework, but rather it is the contribution that archival institutions — public and private — make by preserving and making available the records of the working of society as a whole: 'all preservation and use of archives in a democratic society is an historical, administrative and legal exercise in evaluating evidence'.<sup>9</sup> Democratic accountability is therefore a much wider concept than public accountability which is tied to keeping the government accountable for its actions. Eastwood's paper does not address how archival institutions should implement this vision either collectively or within their own statutory or political constraints.

Conceptually, Eastwood's view sits comfortably with what some archivists have termed 'documentation strategies'. Following such strategies, archival or other institutions work cooperatively to acquire or make appropriate custodial arrangements for records relating to particular themes, topics or functions. They attempt to take into account all available documentation across jurisdictional or institutional lines when appraising records which, like a gigantic jig saw puzzle, will eventually build a picture of society as a whole.<sup>10</sup> In Australia societal approaches to appraisal or cooperative appraisal ventures across jurisdictions have not generally occurred.<sup>11</sup> However, within existing jurisdictional mandates, appraisal strategies which target organisations with the same functions or focus on the function performed by an organisation, rather than its records, are increasingly seen as practical ways of appraising records which are created in organisations undergoing constant structural change, as well as changes in recordkeeping systems.<sup>12</sup>

It is difficult to translate the Australian archival experience to date into Eastwood's concepts based on the Canadian perspective. In Australia, a national archival network headed by a national archival authority has never developed. Public and collecting archival institutions have not cultivated documentation strategies or the idea of acquiring records from all sectors of society on a cooperative basis. The majority of Australian public sector archival authorities have responsibility only for public records. However, de-regulation and corporatisation/privatisation are altering the respective responsibilities of private and public sector instrumentalities as well as that of archival institutions. In this sense Eastwood's view of the nexus between public and private records may be useful. Existing concepts of public records need to be re-evaluated. Moreover critical questions of accountability need to be addressed. How accountable for the public record can an archival authority be? How can it control and monitor disposal/disposition? Are the records retained on a long term or a

continuing basis a true reflection of the government's activities and its interaction with other organisations and the public as a whole or individually?<sup>13</sup>

### **Accountability through recordkeeping practices — the role of an archival authority**

In the late 1980s and into the 1990s Australia witnessed corporate failures and corruption in several state governments, the full extent of which is now being revealed in Royal Commissions and Inquiries. Cases reported in the media in which the lack of appropriate documentation hampered investigations are numerous. Administrative law reform aimed at more open government in the 1980s may have succeeded in giving individuals greater access to information required to enforce their individual rights, but there is little evidence that it has made policy making more transparent, or policy makers less prone to destroy records illegally or not to exploit FOI exemptions to prevent the disclosure of higher level government activities.<sup>14</sup>

In this environment, some public archivists see the role archival institutions can play in relation to accountability taking on another face, progressing naturally from the traditional view of archivists concerned with the evidential and contextual nature of records and the impartiality they provide, to ensuring that records do in fact provide these qualities and assist in keeping governments 'honest'. Accountability through recordkeeping is linked with the authority of the archival institution to monitor and regulate compliance with standards of recordkeeping in government agencies. This can only be achieved if the archival authority has investigative powers and a records audit role which includes involvement in recordkeeping systems from the design stage.<sup>15</sup> Thus some archivists would argue that accountability for recordkeeping is concerned with the quality of the record in terms of its accuracy, reliability and integrity so that it can serve current and future social and organisational purposes as well as providing individuals with accurate documentation of their entitlements and responsibilities.

Accountability has also become closely linked to issues of privacy. Recordkeepers and archivists need to be accountable for safeguarding privacy otherwise privacy advocates will call for the destruction of sensitive records, as soon as they have served their immediate purpose.<sup>16</sup> There is the added problem of regulating private information contracted out to privatised bodies. Archival authorities must work closely with recordmaking bodies to ensure that the long term uses of the records, eg to establish individual rights or for research purposes, are provided for within the protection of privacy principles.

Within this century most government archival authorities have

developed interventionist roles in the authorised disposal of public records. Regulation of disposal or disposition, arising originally from the pragmatic concern to control the amount of paper records entering archival repositories, and now encompassing any action involving retention or destruction, transfer of ownership or custody, is ipso facto an accountability tool because it ensures that the records of the actions of governments are not destroyed without the due processes of evaluation and authorisation. Disposal practice has moved away from the evaluation of records that have been inactive for many years to evaluating current records, an essential requirement for electronic records. Although the technical reasons for ensuring that retention requirements have been built into electronic records at the system design stage have been frequently aired, there has not been the same awareness of how this contributes to public accountability.

It has however been argued that the ability of an archival authority to control the disposal/disposition of government records, particularly the destruction of records, is a critical accountability tool which **supports** audit/efficiency reviews, reviews by the Ombudsman and Administrative Review Tribunals, public rights of access to information and the prevention of the falsification of information.<sup>17</sup> Each of these points requires a study in its own right. Clearly, however, ensuring that an agency documents its activities appropriately depends on an interventionist role at an early stage in a record's life.

Developing this scenario, a government archival authority would take on the role of an accountability mechanism/watchdog similar to that of the Auditor-General or the Ombudsman ensuring that government authorities within its specified jurisdiction are carrying out their functions by way of maintaining accurate, reliable and retrievable documentation. This would be monitored through a disposal process built into the recordkeeping systems of these authorities. Keeping in mind Eastwood's nexus between public and private records, this strategy could also be extended to non-government agencies when it is in the public interest that they be equally accountable to the Australian people. In addition the archival authority itself would need to be accountable to the public for the disposal actions it recommends so that the reasons for maintaining particular records are available publicly. As premature destruction of records is a denial of access, rights of access would be linked with appraisal decisions.

### **Accountability and Australian Archives — the legislative framework**

In the 1980s the functions and powers of many Australian government archival authorities became more clearly established in Acts of Parliament. The *Archives Act 1983* was part of the Commonwealth's administrative law reform package of the early

1980s complementing the Commonwealth *Freedom of Information Act 1982*, and working in with institutions such as the Ombudsman and the Administrative Appeals Tribunal to broaden the individual's rights to have administrative decisions reviewed on their merits. The *Archives Act* and the *Freedom of Information Act* together also give individuals a qualified right of appeal when access to current and older government information is restricted, and are intended to make a person or a group more effective in holding the government accountable for its decisions and actions, thus enabling fuller participation in government decisionmaking.

The political milieu of open government expressed in the new administrative legislation imposed new duties upon administrators to be publicly accountable for their actions. Accountability was seen as a logical requirement of public administration.<sup>18</sup> Statutory reform at the federal level of procedures for review of administrative decisions and the creation of new review institutions were in part a result of the diminution of the doctrine of ministerial responsibility. New avenues of government accountability and public participation were required. Special Tribunals, a new system of Parliamentary Committees, and the Ombudsman were introduced as components of a system of administrative accountability through which government actions were to be reviewed and monitored.<sup>19</sup>

There was a general assumption that standards of documentation in government agencies were initially raised by s.8 and 9 of the *Freedom of Information Act 1982* which required the publication of information about agency procedures and guidelines. Rights of public access were meant to make government more accountable for decisions and actions. Thus documentation of the decisionmaking process was apparently considered to be as important as the decision itself. Evidence of the *decisionmaking process* provided by documentation and access to such evidence was seen to be fundamental to accountability.

Improved recordkeeping would seem to have been a logical outcome of the 'new administrative law' which required that documentation of the decision, and the evidence upon which decisions were based, be disclosed in some form, but that this was indeed an outcome of these changes has not been proven empirically.<sup>20</sup> Most anecdotal evidence indicates that the main impact has been on client transactional records rather than those dealing with policy decisions. In addition, internal working documents which disclose the deliberative processes of government, the disclosure of which would not be in the public interest, are exempt by certificate under s.36 of the Commonwealth FOI legislation and, though appealable to the Administrative Appeals Tribunal, the certificate cannot be revoked if the Minister does not accept the Tribunal's decision. Thus there has not been a strong

legislative incentive to maintain and make accessible policy and related documents under FOI legislation.<sup>21</sup>

The *Archives Act 1983* formalised accountability concepts that had operated in Australian Archives for many years.<sup>22</sup> Despite punitive measures available in the Act, it was not formulated on the basis of issuing harsh penalties for non-compliance as it was developed in the spirit of the other administrative reforms of the day, which were all based on the prevailing notions of participatory processes of government. In the same tenor, powers of inspection of Commonwealth agencies by Australian Archives, in relation to monitoring compliance with the Act, were designed to be implemented through mutual arrangement by all parties concerned.<sup>23</sup> The *Archives Act* is a powerful and wide-ranging piece of legislation but its effective implementation is predicated on self-regulation by government agencies, supported by nationally controlled, consistent and standardised documentation of the disposal activities of Australian Archives and of its clients, detailed guidelines, staff training, agency user education and program evaluation.

In common with other Commonwealth agencies in the early 1980s, Australian Archives saw its own accountability very much in terms of the objectives laid down in its legislation and further developed in its corporate plan. There was, and still is, as for all government bodies, a general accountability to the Auditor-General and Parliament. Specifically, Australian Archives became accountable for its disposal role to an Advisory Council, but only insofar as it was required to report on its disposal practices. This contrasts with its accountability for public access where a statutory mechanism of appeal to the Administrative Appeals Tribunal was introduced in the *Archives Act 1983*.<sup>24</sup> The legislation was a new challenge for Australian Archives and for public authorities working in an environment now open to public scrutiny. Australian Archives came to be accountable for aspects of recordkeeping throughout government in much the same way as the Department of Finance has an accounting function for all the public service. Commonwealth agencies were in turn accountable to Australian Archives for disposal. It is in relation to Australian Archives' role of accountability on a government-wide basis with particular reference to its disposal responsibilities, and its archival resources mandate, that Eastwood's concepts of democratic accountability and continuity can be brought into play in the Australian context.

To be accountable for the public record, Australian Archives had to have the necessary legislative mandate and appropriate powers over Commonwealth records, as well as the resources to carry out the mandate. The functions for which Australian Archives was established included ensuring 'the conservation and preservation of the existing



and future archival resources of the Commonwealth' (s.5(2)a of the *Archives Act 1983*). It was provided with the powers to carry this out through s.6(1)c of the *Archives Act 1983*. Although the records of the Parliament and the Courts were excluded from provisions relating to disposal and access, the Act does provide for their inclusion under specified arrangements through regulation.<sup>25</sup>

The legislation provided a definition of a record which was not media specific. In the case of electronic records this definition has supported Australian Archives' Commonwealth-wide awareness campaign on electronic records disposal in 1987/88.<sup>26</sup> Unlike its North American and European counterparts, the Commonwealth has not had to have recourse to the courts in order to define what constitutes a public record.<sup>27</sup> A *Commonwealth* record is defined as the property of the Commonwealth or of a Commonwealth institution, that is, it is owned by the Commonwealth. A record can also be deemed/prescribed to be a Commonwealth record by regulation under s.3(6) or s.22 thus making provisions of the Act relating to Commonwealth records applicable to records so declared. In addition, although specific records of particular agencies may be exempt from transfer to Australian Archives they are not exempt from disposal or access provisions (s.29).

The Act provides a broad mandate for Australian Archives' acquisition policy which is not tied specifically to Commonwealth or even to government records. It defines the archival resources of the Commonwealth in s.3 (1) as Commonwealth records *and other material that are of national significance or public interest* and relate to

- (a) the history or government of Australia;
- (b) the legal basis, origin, development, organisation or activities of the Commonwealth or of a Commonwealth institution;
- (c) a person who is, or has at any time been associated with a Commonwealth institution;
- (d) the history or government of a Territory; or
- (e) an international or other organisation the membership of which includes, or has included, the Commonwealth or a Commonwealth institution.

The functions are described in relation to 'archival resources' generally but this is qualified by Part V which deals with archival functions in detail in relation to the concept of Commonwealth records only. Objects of archival significance are also defined in terms of being the property of the Commonwealth or of a Commonwealth institution and must be declared by the Minister responsible for Australian Archives, by notice in the *Commonwealth Gazette*, as constituting part of the archival resources of the Commonwealth.<sup>28</sup> In practice Australian Archives relies mainly on establishing that a given set of

records are Commonwealth records rather than the more nebulous concept of archival resources. It has tended to use this broader definition in areas that do not conflict with the acquisition policies of other collecting institutions. This has been the basis of Australian Archives' continued acquisition of personal papers of government ministers and senior officials, and the provision of a corporate service for organisations which are not strictly part of the Commonwealth government.<sup>29</sup> In addition the definition of a Commonwealth institution includes authorities of the Commonwealth which were established for a public purpose over which the Commonwealth can exercise some control and have been prescribed. Bodies can refuse to be prescribed and it is a matter of negotiation between Australian Archives and the authority concerned. However using the 'archival resources of the Commonwealth' provision in cases where a corporatised body does not suit the criteria of prescription is another option Australian Archives may apply.<sup>30</sup>

### **Australian Archives' current operating environment — the constraints on public accountability**

Despite continued advances in administrative law, the current environment is characterised by the diminishing resource allocation to government bodies and the new managerialism which focuses on products and efficiency rather than the fulfilment of the statutory objectives of government bodies.<sup>31</sup> It has affected the operations of all archival authorities including Australian Archives which now focuses strongly on marketing strategies to cater for its clients, performance indicators and efficiency tools. Like other government bodies it must look at the components of its activities which can be run commercially. It has become 'client driven', identifying its clients as either government agencies or individual members of the public. Although it is designated a 'public interest' body and is therefore not required to be driven by purely commercial motives, its *Business Plan 1992-93 to 1994-95*, which in turn supports its parent department's corporate goals of seeking financial success through enterprise, does place pressure on it to follow a marketing approach. Performance in relation to all its programs is monitored through corporate management mechanisms.

The nature of the impact on public accountability of the private sector's encroachment into activities previously performed by government is still subject to speculation. In areas that are privatised or corporatised in such a way as to be removed from the control of archival legislation, public archival authorities will no longer be able to ensure the public accountability of these bodies. The loss of a government function to the private sector also prevents a continuous integral record of that function being documented by public archival

authorities unless cooperative appraisal strategies are entered into. Administrative convenience and evidentiary practice would suggest that records should transfer to the body which takes over the function to maintain unbroken custody. In reality this has not always been in the best interest of the records, particularly in cases in which they are at risk of loss or destruction. In addition, the archival authority may also be concerned to retain access to records that document the legal obligations and rights of government or individuals, or are of continuing value to the government for other purposes, or contain information which would normally be exempt from public access.<sup>32</sup> It is in fact more likely that records will move from the jurisdiction of one government archival authority to another. However in cases where a government function moves into the private sector it is more likely that the records created by the former government body will remain in government hands, but there is no hard and fast rule.<sup>33</sup>

Australian Archives is currently endeavouring to maintain control over the records of former Commonwealth institutions which are in the process of being corporatised or privatised.<sup>34</sup> The urgency of the problem is evident from the increase in the transfer of custody and ownership cases under investigation since 1986. Australian Archives is responding to this issue in several ways. Corporatised government agencies are urged to see the benefits of archival legislation both in terms of economical records management practices as well as public accountability and are offered archival and records services through an expanded corporate service.<sup>35</sup>

Ironically agencies have argued that the *Archives Act 1983* handicaps their efficiency, because of the additional regulatory control and scrutiny imposed. Government Business Enterprises and members of the intelligence community have sought exemption from the legislation and a large number of agencies are able to use their enabling legislation to ensure that they are not established for a public purpose.<sup>36</sup> This excludes them from a range of administrative law legislation including FOI, privacy and archival legislation. For example, the Commonwealth Bank has refused to be prescribed as an authority of the Commonwealth. On the other hand, Telecom Corporation and Superfund are bodies that have been prescribed, the former because of the perception held about the beneficial services Australian Archives could offer. In the case of the latter, its parent department saw prescription as a means of maintaining greater accountability of the operations of the Superfund for which it is responsible. Apart from meeting other criteria for prescription, corporatised bodies must willingly agree to be prescribed. This means that they need to be persuaded of the advantages of the services Australian Archives can offer.<sup>37</sup> Australian Archives cannot be accountable for records disposal if records in which the Commonwealth has a substantial interest are no

longer subject to its legislation. This issue is posing a serious challenge to Australian Archives.

### **Conclusion**

The changed operating environment since the passing of the *Archives Act 1983* has thus shifted the emphasis onto institutional accountability serving efficiency gains. However in the current climate of de-regulation, contracting out of government services, corporatisation and privatisation, there is also a requirement that the public interest of the community be maintained. Perhaps the current definition of a public record should be more closely tied to a legal concept of public interest than to that of public property. Activities in society which are in the public interest will be provided by a range of entities of varying legal status. How can we ensure that these entities are accountable to the public for their activities and provide public access to their records? Currently this depends on their legal status, for example those registered as companies may be accountable through the provisions of the Federal Corporations legislation and be subject to the watchdog powers of the Australian Securities Commission. Australian Archives is aware of and responding to these issues as evidenced in its most recent *Business Plan*. In order to maintain control of the records of former Commonwealth bodies the arguments of accountability and efficiency are once again being strongly argued, albeit in a different environment from the 1980s. Within the broader political and constitutional framework, the issue of government accountability is linked to the crisis in the Australian Westminster-based system of government as evidenced in the call for a greater separation of executive and legislative powers.<sup>38</sup> Public archival authorities should avail themselves of these impending legal and constitutional reforms to reinforce the central role of recordkeeping in accountable government.

Eastwood's perception of a network of archival authorities maintaining the evidence of society's actions through the archival record provides a mission for archivists embedded in the historical evolution of archival authorities. Although it is not expressed in these terms in Australia, publicly funded archival authorities should take the lead in promoting a wider appraisal strategy which takes into account the fluid organisational structures in which human activity operates today and the resultant recordkeeping patterns. Australian Archives' ability to maintain control of the records of activities of a public nature which are no longer provided by government is the biggest single challenge to public accountability and continuity through recordkeeping in the current federal environment. How it handles these issues could also provide a model for state archival authorities and a broader framework in which all archival authorities might be encouraged to operate.

## ENDNOTES

**Acknowledgment:** I wish to acknowledge the useful comments made by Steve Stuckey, National Director, Records Evaluation and Disposal, Australian Archives and Sue McKemmish, Deputy Head, Graduate Department of Librarianship, Archives and Records, Monash University during the preparation of the article.

1. Ian Temby, 'Accountability and the ICAC', *Australian Journal of Public Administration*, Vol. 49, No. 1, March 1990, p. 1.
2. M. N. Miah, 'The Financial Accountability and Control Structure of Public Sector Utilities', *AJPA*, Vol. 47, No. 3, September 1988, p. 264. Miah's article is concerned with the need to improve the financial accountability of public sector utilities handling natural resources.
3. Cedric Pugh, 'Efficiency Auditing and the Australian Audit Office', *AJPA*, Vol. 46, No. 1, March 1987, pp. 55-65. Efficiency auditing is concerned to achieve a given target output or effect for the least cost. It presupposes that public expenditure can be budgeted and organised in terms of goal-specified programs. Mark Considine, lecturer in public policy at the University of Melbourne, spoke at a seminar on 'Managerialism, accountability and the archival document', at Monash University on 6 May 1992, of corporate management as essentially concerned with internal accountability quite separate from political initiatives such as FOI.
4. Temby, *op.cit.*, p.1.
5. Kenneth Wiltshire, 'The Paradox of Privatisation', *AJPA*, Vol. 49, No. 2, June 1990, pp. 195-199. Historically, Australian ownership of public resources was based on the belief that it was a means of accountability to the people: see also Miah, *op.cit.*, pp. 263-274. The issue of the non-departmental area of public administration being in danger of escaping accountability to the Australian Parliament was the brief of the Senate Standing Committee on Finance and Public Administration in 1987. In 1989 the Committee reported upon Commonwealth companies which had been incorporated, not corporatised, including many companies in which the Commonwealth had a substantial interest. It found that companies were not being reported upon by the relevant Ministers. It recommended that the companies be audited by the Auditor-General and that a register of companies in which the Commonwealth has a substantial interest be established: see John Coates, 'Government-owned Companies and Subsidiaries: Issues in Accounting, Auditing and Accountability', *AJPA*, Vol. 49, No. 1, March 1990, pp. 7-11.
6. Terry Eastwood, 'Reflections on the Development of Archives in Canada and Australia', in *Papers and Proceedings of the 7th Biennial Conference of the Australian Society of Archivists, Inc.* Hobart, June 1989, p. 80. Professor Eastwood is coordinator of the Master of Archival Science program at the University of British Columbia.
7. *Ibid.*, p. 78. There have been difficulties in Canada in defining the boundaries of national, provincial and local collecting policies: see Kathy Hall, 'Archival Acquisitions: Legal Mandates and Methods', *Archivaria*, Vol. 18, Summer 1984, pp. 65-68. In fact the National Archives of Canada is moving away from a single strategy of acquisition of records in both the public and private sectors. The current records acquisition strategy it is formulating is conceived for government records only: see Richard Brown, 'Records Acquisition Strategy and its Theoretical Foundation: The Case for A Concept of Archival Hermeneutics', *Archivaria*, Vol. 33, Winter 1991-92, p. 54, note 7.
8. There is a nexus between the establishment of European archival institutions and the concept of public accountability. The political notion of the sovereignty of the people and the right of public access to information to establish individual rights were catalysts in the establishment of the French National Archives. European archival institutions were initially tied to the legal and administrative uses of archives rather than to their uses for historical research. The creation of 'historical

archives' dates from their placement into government repositories: see Luciana Duranti, 'The Odyssey of Records Managers — Part II', *ARMA Quarterly*, Vol. 23, October 1989, p. 8. In North America, the European archival tradition was transplanted into the public sector. The manuscripts tradition, rooted in librarianship, adopted many of the practices of the public archives tradition but it served a different client — a broad historical community. The public sector archival institutions placed their loyalty with their employers — the federal and state governments. Thus public accountability in the public sector was weighted towards administration and an amorphous public; while in the manuscript tradition the cultural role of the collections was based on a perceived interpretation of what the community considers to be of historical importance: see Luke J. Gilliland-Swetland, 'The Provenance of a Profession: the Permanence of the Public Archives and Historical Manuscripts Traditions in American Archival History', *American Archivist*, Vol. 54, Spring 1991, pp. 160-175.

9. Eastwood, *op.cit.*, p. 80.
10. Eastwood, however, is not an advocate of the 'documentation strategy' approach. For a review of archival literature on documentation strategy, see Terry Abraham, 'Collection Policy or Documentation Strategy: Theory and Practice', *American Archivist*, Vol. 54, Winter 1991, pp. 44-52. Other recent articles on this debate include Helen Samuels, 'Improving our Disposition: Documentation Strategy', *Archivaria*, Vol. 33, Winter 1991-92, pp. 125-140 and Terry Cook, 'Documentation Strategy', *Archivaria*, Vol. 34, Summer 1992, pp. 181-191. Samuels' article complements the original theory of documentation strategy, of which she was a major proponent, by introducing an institutional functional analysis approach, designed to assist institutional archivists in planning an acquisition policy. It is based on an understanding of the functions of the institution and the processes that record the activities arising out of the functions defined. Documentation is defined in terms of what should document a function, and therefore includes both officially recorded information, as well as published material and documentation which is specifically created to fill in the gaps in the recorded information. Additionally, by applying the same functions identified within institutional types, such as universities, hospitals and courts, the method also supports cooperative documentation strategies involving many institutions. In *Varsity Letters: Documenting Modern Colleges and Universities*, SAA and Scarecrow Press, N.J. and London, 1992, Samuels produces a functional study of American universities and colleges as a first step to developing specific documentary goals for individual institutions. It is a collection management tool and includes an institutional documentation plan which translates the functional analysis into a detailed plan applicable to a specific university or college or any institution. Cook's article evaluates Samuels' modification to the original documentation strategy approach which combines functionalism and thematic strategies more closely. Although he sees her approach as supporting the side of the North American appraisal debate which considers the context of record creation as central to understanding the significance of the records, he believes she blurs function and theme. Cook believes that corporate and institutional records must first be appraised by looking at the agencies' mandated functions and by using a structural-functional matrix within a holistic model reflecting the most important societal functions. For Cook, documentation strategy is a supplementary appraisal approach, mainly useful for capturing non-institutional records.
11. For a view on cooperative appraisal ventures in the United States, see Robert Sink, 'Appraisal: The Process of Choice', *American Archivist*, Vol. 53, Summer 1990, pp. 453-458. There are some moves afoot in Australia through the Australian Council of Archives' special interest group STAG (State and Territory Archives Group) to institute some cooperative appraisal of records that cover functions that are represented in various tiers of government: see letter to the author of this article from Steve Stuckey, National Director, Records Evaluation and Disposal,

- Australian Archives, 23 December 1992. There are examples in Australia, albeit within their own archival jurisdiction, of disposal schedules based on the commonality of records across a broad functional/client responsibility: see Chris Hurley and Sue McKemmish, "First write your disposal schedule...", *Archives and Manuscripts*, Vol. 18, no. 2, Nov. 1990, pp. 190-199.
12. Terry Cook argues for a move away from the 'bottom up' approach to appraisal. He advocates a macro-appraisal strategy which focuses on factors which give rise to the records rather than the physical record itself. See Terry Cook, 'Mind over Matter: Towards a New Theory of Archival Appraisal', in Barbara L. Craig, editor, *The Archival Imagination, Essays in Honour of Hugh A. Taylor*, Association of Canadian Archivists, Ottawa, 1992, pp. 38-70. This accords with the view expressed initially in 1972 and again in a recent article by Hans Booms, a leading German appraisal theorist, in 'Überlieferungsbildung: Keeping Archives as a Social and Political Activity', *Archivaria*, Vol. 33, Winter 1991-92, p. 25, in which he states that 'archival value is not intrinsic to the record and generally cannot be established there'. Australian Archives is also moving away from a record-centred approach to appraisal by identifying major functions of government and the agencies responsible as the initial focus of an appraisal program. Telephone conversation with Steve Stuckey, National Director, Records Evaluation and Disposal, Australian Archives, 13 April 1992.
  13. A case study reviewing the disposal practices of Australian Archives has been undertaken by the author of this article: see 'Accountability for the Disposal of Commonwealth Records and the Preservation of its Archival Resources', in Sue McKemmish and Frank Upward, editors, *Archival Documents: Providing Accountability Through Recordkeeping*, in press, Graduate Department of Librarianship, Archives and Records, Monash University, Melbourne. The study considers the role Australian Archives plays as an accountability mechanism through its appraisal and disposal program. It also asks how accountable Australian Archives is in performing this role.
  14. For example, cases of illegal destruction which the Keeper of the Public Records, Victoria was prevented from pursuing because they were embarrassing to the government, in particular the 'Nordlinger Affair', were reported in the press and summarised in the Public Records Support Group, *Newsletter*, Vol. 3, No. 6, 30 September 1992, p. 8.  
It has also been claimed that FOI has been evaded by leaving important documents as drafts and thereby classified as internal working papers which can be deemed exempt documents under s.36(1) of the *Freedom of Information Act 1982* (Commonwealth): see comment by Privacy Commissioner Kevin O'Connor on 22 September 1992, at a seminar at Latrobe University on 'Privacy: Implications for Research and Student and Staff Records'. In Victoria FOI has been successfully used by the political opposition to broaden their knowledge of government activities by vigorously pursuing the appeal provisions: see Spencer Zifcak, 'Freedom of Information in Principle and Practice: The Victorian Experience', *AJPA*, Vol. 47, No. 4, December 1988, pp. 312-320. Also on the Victorian front, state-owned enterprises were effectively removed from the provisions of FOI under the *State-Owned Enterprises Act 1992*, passed in November 1992.
  15. Glenda Acland, 'Managing the record rather than the relic', *Archives and Manuscripts*, Vol. 20, No. 1, May 1992 pp. 57-63. Acland's views are couched in the legal language of 'duty of care' and 'negligence'. She stressed the need for an archival authority to take care of the records well before they are in archival custody.
  16. Anne-Marie Schwirtlich, 'Privacy versus Access', in *RMAA, Proceedings of the 8th National Convention, Darwin, N.T. 15-18, Sept. 1991*, p. 105.  
The trading in private information revealed recently in the ICAC report of August 1992 may result in a call for client information to be retained for shorter periods in public records: see Gareth Boreham, 'Illegal Sale of Personal Information Unmasked', *The Age*, 13 August 1992, p. 3 and Boreham, 'The Right to Privacy?', *The Age*, 20 August 1992, p. 14.

17. Chris Hurley, 'Submission to the Victorian Legal and Constitutional Committee's Inquiry into FOI and Access Policy,' cited in Victorian Legal and Constitutional Committee, *Report Upon Freedom of Information in Victoria*, November 1989. Disposal authorisation for public records evolved to fulfil an archival purpose; the bulk of records would be destroyed before entering archival control or stored in less expensive accommodation, while the remaining permanent core would be given appropriate physical and intellectual care with access arranged for government and public users. Disposal has other functions in relation to records management which are not of direct concern to this study.
18. Australian Archives, *Disposal Conference 11-12 Dec. 1984*, Day 1, Session 2. Unpublished paper by Stephen Ellis, Senior Project Officer, Disposal, Technical Development and Review, 14 Nov. 1984.
19. Margaret Allars, *Introduction to Administrative Law*, Butterworths, Sydney, 1990, pp. 18-28. Some of these review bodies were already in existence but their scope has broadened.
20. *Ibid.*, p. 31. Grounds for review include unfairness which could arise from inadequate material on which a decision is based.
21. The main impact of administrative law reform on recordkeeping has been in government agencies which deal with public entitlements and rely on simple transactional client records, for example Veteran Affairs, Social Security and Community Services: as reported in seminars by Professor Hanks, Faculty of Law, Monash University on 8 April 1992, and Dr. John Paterson, Director General, Community Services Victoria on 29 April 1992 at Monash University. Use of Freedom of Information in relation to access to personal information is discussed in Robin Bell and Helen Watchirs, 'Freedom of Information: The Commonwealth Experience', *AJPA*, Vol. 47, No. 4, December 1988, pp. 296-311. Agencies have attributed better recordkeeping to Freedom of Information but this is less evident in the area of policy development. Cases both in favour of and against disclosure in the public interest in relation to documents of a deliberative nature under s.36 of the *Freedom of Information Act 1982* (Commonwealth) are discussed in Bell and Watchirs, *op.cit.*, pp. 303-304.
22. Steve Stuckey, 'Archives Act and Storage Media — Restraint or Assistance?' in *Storage Media and the Law*, A Seminar by the Records Management Association of Australia, Canberra, 7 March 1990, p. 19.
23. The *Archives Act 1983* s.28 entitles Australian Archives 'for the purposes of this Act, to full and free access, at all reasonable times, to all Commonwealth records in the custody of a Commonwealth institution other than the Archives.'
24. Australian Archives, *Disposal Conference, 11-12 Dec.1984, op. cit.* Initially it appears that the Advisory Council was to have operated as an accountability mechanism in relation to disposal decisions, although under the *Archives Act 1983*, s.25 Australian Archives is only required to report on its disposal practices to the Council in general and is not required to obtain approval for specific disposal decisions. Steve Stuckey believes that it was never intended that the Council should have a veto power over disposal decisions, unlike the Archives Authority of New South Wales. It is kept informed of disposal practices and offers advice in relation to disposal, the census case being an example.
25. Australian Archives proposes to extend the application of the *Archives Act 1983* to records of the Federal Parliament, the courts and specified corporate bodies: see Australian Archives *Business Plan 1992-93 to 1994-95*, Strategy 1.18, and *Annual Report, 90/91*, p. 9. Although the records of the Parliament and the courts are considered Commonwealth records under the Act they have to date been excluded from the provisions relating to access and disposal. S.18,19 and 20 provide that the divisions dealing with disposal could be applied to the records of Parliament and the courts under specified arrangements promulgated through regulations. S.6 also provides for regulations under which records in specified cases or circumstances can be deemed Commonwealth records.



26. David Roberts, 'The Disposal of Electronic Records in Office Automation Systems of the Australian Public Service', *A & M*, Vol. 17, No. 2, Nov. 1989, pp. 219-231. The definition of a record in the *Archives Act 1983* does not rely on the evidential or contextual nature of records, but rather on the information contained in connection with any event, person, circumstance or thing. It assumes that content and physical medium are inseparable and ignores the fact that electronic records can be stored on a variety of media. Despite this issue electronic records are clearly covered by the Act: see s.24(1) and (5).
27. For example, in the United States the National Archives and Records Administration contended that it did not have the authority to define a public record: see Richard Cox, *American Archival Analysis: The Recent Development of the Archival Profession in the United States*, The Scarecrow Press, Inc. Metuchen, New York and London, 1990, p. 320.
28. Australian Archives, *Disposal Manual, Technical Guidelines*, H7, October 1992. The *Archives Act 1983* s.61 and s.62 deal with objects of archival significance which are distinct from objects that are Commonwealth records and are subject to s.24.
29. Australian Archives, *Disposal Manual, Personal Records*, C1. 3-6 and the *Archives Act 1983* s.5(2) (f) and 5(2) (g). The personal records service does have the added advantage that most of the records it acquires also include Commonwealth records and this ensures that they remain in Commonwealth custody.
30. Commonwealth of Australia, *Archives Act 1983*, s.3.1 indicates that corporatisation does not necessarily remove a body from the Act. The guidelines in Australian Archives, *Disposal Manual, Technical Guidelines*, E7.6, 4.8 deal with methods for keeping corporate bodies within the jurisdiction of the *Archives Act 1983* by either establishing them for a 'public purpose' or as part of the 'archival resources of the Commonwealth'.
31. Anna Yeatman, 'The Concept of Public Management and the Australian State in the 1980's', *AJPA*, Vol. 46, No. 4, December 1987, p. 341.
32. Australian Archives takes into account these three aspects when it considers the transfer of records as part of the privatisation of a Commonwealth authority: see Australian Archives, *Disposal Manual, Technical Guidelines*, E7.6, 4.9.
33. The issue of transfers of functions requires a detailed study in its own right. Examples indicate a case by case arrangement. For example, many Victorian colonial records pertaining to functions transferred to the Commonwealth moved into Commonwealth custody. However in some cases the records have remained in the predecessor's jurisdiction. In cases where there is no successor, records may be housed under various arrangements. For example company records of Sydney's Cockatoo Island Dockyard, closely related to Commonwealth activities, were transferred to Australian Archives as corporate records when the dockyard was closed: see Commonwealth of Australia, Department of Administrative Services, *DASNEWS*, State of the Nation Issue, March 1992, p. 8.
34. *Business Plan, op.cit.*, Strategy 2. Australian Archives has recently developed guidelines to deal with cases of corporatisation or privatisation of Commonwealth agencies, within the existing framework of its legislation, which provide for the acquisition of Commonwealth related records: see Australian Archives, *Disposal Manual, Technical Guidelines*, E7. These guidelines cover the transfer of custody and ownership of Commonwealth records including the appraisal of records that are transferred to privatised bodies and include arrangements for ensuring access to them by Australian Archives, the previous controlling agency or superior department, for as long as it is deemed necessary. However these arrangements do not cover records created by the privatised body. Once ownership of Commonwealth records is transferred to a non-Commonwealth body the records are no longer subject to the disposal and access provisions of the *Archives Act 1983*: see E7.2, 2.2. How far the Act can apply to companies wholly or partially owned by the Commonwealth will be considered in relation to a review of the Act: see

- Australian Archives, *Annual Report, 1986-87*, p.12 and *Annual Report 1987-88*, p.14. In the case of a company an equity of fifty-one percent Commonwealth shareholding has usually been required to consider the records Commonwealth records. Telephone conversation with Steve Stuckey, National Director, Records Evaluation and Disposal, Australian Archives, 13 May 1992. In some cases the removal of a corporatised authority from the *Archives Act* has been unintentional. Corporatised bodies which are no longer subject to the *Archives Act 1983* can be prescribed under s.3(1), ss.(c) if they have been established for a public purpose and if they agree to be prescribed. Where prescription is not an option, permanent records of a corporatised body may be sought as corporate records under s.3(2): see *Disposal Manual E7.6*, 4.6-4.8.
35. Australian Archives, *Annual Report, 1990-91*, p. 9 and *Disposal Manual, Management Guidelines*, Current Goals and Strategies of the Records Evaluation and Disposal Sub-Program, May 1992, A3.8, 6.1. The goal is to capture 80% use of the Personal and Corporate Record Services by target groups by June 1997.
  36. The disturbing trend of agencies seeking exemption from the *Archives Act 1983* is considered a major challenge for Australian Archives: see *Australian Archives, Corporate Plan, 1990-91*, p. 7.
  37. The decision by Telecom to be prescribed was influenced by the quality of the service provided by Australian Archives before corporatisation. Australian Archives takes the initiative in offering prescription to bodies once they are corporatised. Usually a parent department's approval is sought for prescription and for its enforcement. If the corporatised body does not agree to prescription, it may still opt for a corporate service. Telephone conversation with Steve Stuckey, National Director, Records Evaluation and Disposal, Australian Archives, 13 May 1992 and 8 February 1993.
  38. A crisis in relation to the principle of the separation of powers both federally and in the states, particularly the failure of executive accountability to Parliament and the role of the judiciary in filling the accountability vacuum, has been highlighted by several recent incidents. See for example Spencer Zifcak, 'Judges Help to Reinforce Accountability', *The Age*, 21 December 1992, p. 11. The WA Inc. Inquiry's first report indicated that among other failures, Parliament had not provided an effective check on the executive which dominated it: see report in *Time*, No.44, 2 November, 1992, pp. 54-55. The situation was eloquently put by Justice John Toohey of the High Court, in a speech to a conference on constitutional change in the 1990's in October 1992, following the High Court's decision to reverse the federal political advertising ban which was criticised by Senator Tate, the Minister for Justice. An edited version of the speech was reproduced in an article by Barrie Virtue, 'The End of Democracy?', *Australian Law News*, Vol. 27, No. 10, November 1992 pp. 7-14. Toohey stated that 'parliaments are increasingly seen to be the de facto agents or facilitators of executive power, rather than bulwarks against it'. The judiciary was stepping in to protect the misuse of legislative and executive power (p.8).