

Editorial

The genesis of this theme issue of *Archives and Manuscripts* is largely my own research interests centred on the historical, conceptual and applied links between recordkeeping and the law. However the idea of a theme issue on recordkeeping and the law goes back to at least 1995, and to some inspirational conversations I had with Michael Piggott, then Director, External Relations, Australian Archives.¹

The original intention, as expressed in the editorial policy prepared for this theme issue, had been to solicit commissioned articles from legal experts that made a direct connection between recordkeeping and a number of specified legal concepts or articles that dealt with legal issues that are relevant to the context of recordkeeping (see below). It was intended that the recordkeeping perspective in the articles would be interpreted from within the 'records continuum model'² which allows for current, historical and regulatory aspects of recordkeeping to be included from the personal, system, corporate or collective view. What I had not presaged was that most of my prospective authors had had little or no exposure to our professional literature or current discourses. The resultant articles are from those authors that were prepared to open up a dialogue with me on current issues of mutual interest and with whom the profession may hopefully continue a fruitful dialogue beyond the life of this journal.

I had conceived the theme issue (I was over ambitious originally) to include articles on the general nature of the regulatory environment, including:

- frameworks for the recordkeeping/law nexus;

- the continuing accountability crises in government and/or the limitations of administrative law in privatised government businesses;
- privacy as an accountability issue in the recordkeeping context;
- oral traditions as evidence within their own juridical system and their acceptance as evidence by other legal systems;
- the role of ethics in juridical systems and in modern social and business contexts; and
- legal compliance.

In addition I had sought articles on specific legal concepts and the recordkeeping nexus, including:

- the nature of legal relationships; case studies using the relationship model, e.g. the doctor/patient relationship;
- legal concepts of reasonable care and fiduciary duty;
- legal liability and the recordkeeping professional;
- procedures for legally admissible documentary evidence;
- contractual relationships linked to evidence of contractual obligations;
- intellectual property and ownership in relation to recordkeeping;
- access rights and obligations in recordkeeping; and
- archives/records legislation.

There are elements of these themes in the articles written for the journal. However the end products produced by legal experts do not (and could not within the constraints of the journal's size alone) in effect cover all the topics sought.³

The articles are all commissioned pieces from legal experts who were prepared to bring their expertise to bear on our professional issues.⁴ It is to the authors in particular that I extend my appreciation. To the referees and to my recordkeeping colleagues at Monash University goes a special thanks. Finally, I would like to thank the Editor of *Archives and Manuscripts*, Associate Professor Sue McKemmish, for giving me the opportunity to put together this theme issue and for having the necessary trust that I could carry out the task.

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Endnotes

- ¹ I had also been impressed by the theme issue on 'Archives and the Law' published by the Canadian Society of Archivists, as *Archivaria*, Vol. 18, Summer 1984.
- ² The records continuum model is a conceptual tool for analysing recordkeeping and its contexts. It provides a means of understanding the socio-legal environment in which recordkeeping takes place and the role of recordkeeping in constituting personal, corporate and collective memory. There are a number of articles on the records continuum model as articulated in Australia. These include:
Sue McKemmish, 'Yesterday, Today and Tomorrow: A Continuum of Responsibility' in *Proceedings of the 14th National Convention of the Records Management Association of Australia, 14-17 Sept. 1997*, Records Management Association of Australia, Perth 1997, pp. 18-36.
Frank Upward, 'Structuring the Records Continuum, Part One: Postcustodial Principles and Properties', *Archives and Manuscripts*, Vol. 24, No. 2, Nov. 1996, pp. 268-285 and 'Structuring the Records Continuum, Part Two: Structuration Theory and Recordkeeping', *Archives and Manuscripts*, Vol. 25, No.1, May 1997, pp. 10-35.
- ³ Within the constraints of time and space it was not possible to include an article on privacy as an accountability issue and its recordkeeping nexus but I would like to direct readers to John Miller, 'Settling Accounts with a Secret Police: the German Law on the Stasi Records', *Europe-Asia Studies*, Vol. 50, No. 2, 1998, pp. 305-350. Miller's article provides a fascinating analysis of why the records of a highly intrusive personal nature were not destroyed after German re-unification but rather covered by specific legislation passed by the Federal German government in order to carry out 'corrective justice' through the legal system. The recordkeeping profession could learn from the German experience in handling the records of individuals of the State Security Service of the former German Democratic

Republic (STASI). The German Law on the STASI records justified their retention for the purpose of 'settling the accounts' with the former East German regime through the judicial system, despite the fact that the personal information had been gathered 'illegally'. At the same time the Law protected the privacy interests of the victims of the STASI surveillance. Recent Australian cases of 'illegally' gathered personal information include the NSW Special Branch files on prominent lawyers, politicians, and civil libertarians. These files were destroyed notwithstanding their potential value as judicial evidence.

- ⁴ For a detailed discussion of the themes and articles in this issue see 'Recordkeeping and the Law: General Introduction' which follows this editorial.