

Review article

Ethical Meltdown: Accountability and the Australian Recordkeeping Profession

Anne Picot

Anne Picot has held the position of Corporate Archivist at the New South Wales Roads and Traffic Authority since 1991. She has also worked at the federal and local government level as a recordkeeper and on secondment has taught recordkeeping in the School of Information Management and Systems at Monash University. She has made presentations and interventions at numerous Australian Society of Archivists and Records Management Association of Australia conferences and workshops on electronic records issues, appraisal and disposal, access, privacy and other legal aspects of recordkeeping. She is an avid fan of John Clarke's *The Games* which she considers should be compulsory viewing for all those concerned about the state of accountability in Australian public life.

William De Maria, *Deadly Disclosures: Whistleblowing and the Ethical Meltdown of Australia*, Wakefield Press, Kent Town, South Australia, 1999. 305pp. ISBN 1 862 54457 3. \$30.69.

This book consists of a series of accounts of Australian whistleblower cases, including the notorious Heiner affair, which William De Maria analysed to draw the pessimistic conclusion that Australian public life has suffered an 'ethical meltdown'. De Maria raises a number of issues – ethical behaviour, professional responsibility, the public good and accountability – which all pose the question of what to do about it. Over the past decade, the recordkeeping profession has claimed accountability as part of our raison d'être so it behoves us to examine our consciences to see what our response to his challenge should be.

When I began reading this book¹ the movie *The Insider* had just been released in Australian cinemas. This is remarkable since it is the story of a whistleblower,

and on the whole, whistleblowers' stories rarely make it into the mainstream news, let alone Hollywood films and Oscar nominations. The Insider of the title, Dr Jeffrey Wigand, lost his job with a major tobacco firm in the USA after drawing his management's attention to the carcinogenic dangers of an additive to one of his firm's products. He is persuaded later to reveal what tobacco companies know about the dangers of their products in a court deposition and on a CBS television news show.² After Dr Wigand lost his high-paid research job he went into teaching. The court cases his testimony supported won a huge settlement against the USA tobacco giants, and as the film tells it, he would act as he did again, despite the harassment and personal loss his stand cost him. According to William De Maria's analysis, Dr Wigand's experience as a whistleblower is typical.

De Maria's accounts in his book, *Deadly Disclosures: Whistleblowing and the Ethical Meltdown of Australia* are sorry tales of the strife these Australian whistleblowers encountered when they attempted to redress publicly things they considered wrong in their organisations. De Maria has developed an analysis of whistleblowing in these and other cases, from which he concludes that Australian corporate life – public and private sectors – has suffered an ethical meltdown. This book presents a selection of cases from his study and draws some general conclusions about the responses of both governments and organisations to the phenomenon of whistleblowing. Many of the issues De Maria raises and observations he makes touch on concerns which have also been addressed by the recordkeeping profession in other cases of regulatory failures. The concerns are the hard questions about the role of the professional officer in modern organisations, the efficacy of codes of conduct or professional ethics, the boundaries of responsibilities between the organisation's interest and the public interest, and the whole matter of accountability. Over the past decade, recordkeepers have mounted a case that records, and therefore recordkeeping, form a crucial part of the accountability framework, so De Maria's concerns are our concerns.

So what began as a review of his book has grown as it delved deeper into these issues. Originally I was interested in analysing his cases to tease out his characterisation which is I think flawed. However because the accountability argument raises so many significant issues which recordkeepers as a profession need to address, the review has become a more general discussion of these matters. So I propose instead to examine De Maria's definitions and three of his cases, selected to demonstrate different ways of dealing with wrongdoing inside organisations. From this I want to draw out some aspects which apply to another of his cases, the now notorious Heiner affair and thence to discussion of the accountability issues.

I think that most people would regard the individuals whose stories De Maria tells as heroic in their attempts to expose bad public policymaking, cover-ups, the consequences of budget cuts, and discriminatory, improper or criminal behaviour. Further, most people will be appalled by the consequences these same people suffered for pursuing their causes when the initial organisational responses to their complaints or reports did not deal with the problem. However I doubt that they will be surprised, which is less cynicism than a realistic understanding of the nature of bureaucratic organisations, whether public sector or private.

De Maria's argument identifies three elements constituting an ethical decline. The first he asserts is 'a deteriorating standard of ethical behaviour of people controlling economic and political power' (p. 1), in both the public and private sectors. Secondly, he argues there has been an 'erosion of our collective sense of responsibility to speak out against wrongdoing and injustice' (ibid.). These two elements he locates in the context of what he calls the impoverishment of the public sphere, his third element, the result of the past 15 or so years of public sector downsizing, restructuring, and privatisation, usually identified as the agenda of economic rationalism.

The consequences he emphasises is that we now live in a society more unequal than ever before and that this has had a major impact on workforce morale and the sense of collective responsibility for what goes on in the workplace. De Maria observes that the increased insecurity of employment has had an intimidating effect on employees in Australia, especially in the public service, and underpins the erosion of workers' rights. This he argues makes it less likely that employees will blow the whistle on wrongdoing in their workplaces. However the number of whistleblower cases his own research⁵ has identified suggests, on the contrary, increasing disquiet amongst employees about what goes on in their organisations.

His book deals in detail with the cases of a doctor in a hospital, a pathologist in the public service, a minister of religion, three academics, a journalist in the Australian Broadcasting Corporation, a union representative,⁴ a member of the public reporting matters to the police and two senior public officials. His definition of whistleblowing, developed in the course of the Queensland Whistleblower Study in 1993–95, runs:

The whistleblower is a concerned citizen, totally or predominantly motivated by notions of public interest, who initiates of her or his own free will an open disclosure about significant wrongdoing in a particular occupational role to a person or agency capable of investigating the complaint and facilitating the correction of wrongdoing and who suffers accordingly (pp. 24–5).

It is a definition which locates whistleblowing in the workplace, and is refined to exclude anonymous informing or complaints made confidentially, disclosures made to another person or agency for them to make public (which he terms secondary disclosures) and dissent. He discusses this definition at some length emphasising the last characteristic of suffering. As De Maria puts it, 'The non-suffering whistleblower is a contradiction in terms' (p. 25). The result is an intensely individualised view of how to deal with wrongdoing and an account which focuses primarily on what happens to the individuals who take such action. He explicitly excludes dissenters because they often work in groups and pursue different strategies to different ends, 'designed not so much to expose wrongdoing as to enforce a change where change is resisted' (p. 34). They are further distinguished from whistleblowers because of the legal protection derived from acting in groups, so they are less likely to suffer than whistleblowers. This seems contradictory to me because there is an implication that whistleblowers are not trying to effect change, which is not borne out by the cases De Maria discusses. However it raises the question of how to improve the ethical climate in workplaces which De Maria considers by examining the recent trend of developing corporate codes of ethics and education programs for employees and through an analysis of legislation to protect whistleblowers, and draws negative conclusions. He does not examine whether the methods of dissenters working in groups are more successful, yet several of his cases seem to fit the dissenter category as much as his category of whistleblower.

One of the earliest identified instances of whistleblowing was the case of Philip Nitschke,⁵ while he was a doctor at the Royal Darwin Hospital, and the issue was the hospital's lack of preparedness for a nuclear accident on the occasion of a visit by an American nuclear submarine in March 1993. As a spokesperson for the Medical Association for the Prevention of War, Nitschke made statements to the press on the belated emergency training provided to the Royal Darwin Hospital staff just as the submarine entered port. The context for these events was first, the bid by the Northern Territory government to establish Darwin as a base for the US Navy, and secondly, an Australia-wide political campaign against the nuclear industry and nuclear weapons, in which Philip Nitschke had been involved for some years. The antinuclear campaign was seen by the NT government as a threat to Darwin's bid to get a US naval base and Nitschke's public statements about the public health aspects were an affront to the government's aim. While Nitschke identified his actions as whistleblowing,⁶ exposing the shortcomings of the disaster planning, the government saw it as political opposition and moved in a heavy-handed way to silence him. Despite the campaign in the press against him, and the decision not to renew his contract at the hospital, Nitschke maintained a base of support

in the Resident Medical Officers Association at the Royal Darwin, and outside it, in the Public Health Association and the medical peace group. So he continued to speak out about nuclear issues, and eventually his job was offered back to him. This case seems to me less whistleblowing than a political campaign in which Nitschke was a public figure and the exposure of the lack of nuclear accident preparedness was a tactic in that campaign.

De Maria describes two other cases which I think have a similar political dimension: the case of David Obendorf, the veterinary pathologist in the Tasmanian Department of Primary Industry and Fisheries and that of John Millard, an award-winning journalist with the ABC. In Obendorf's case the bone of contention was the state of animal disease surveillance in Tasmania, which Obendorf said was deteriorating, caused by changing priorities in research and other departmental programs. Obendorf attempted to get this addressed up through the bureaucratic chain of command, including the Minister, which resulted in investigations, reviews and increasing factional strife within the Animal Health Laboratory (near Launceston) until he was removed from it and relocated to Hobart. A subsequent union report of staff views of the joint department–union review makes the point that:

There has been no acknowledgement of policy differences as the source of the problems and the reason for David Obendorf's removal. In essence he was 'politically incorrect' (p. 67).

Around the time there were a number of veterinary organisations in other states raising similar alarms about the issue of disease surveillance, so Obendorf might have been first but he was not alone. This does not amount to a political campaign context in the way that Nitschke's actions can be located, but there were professional associations, unions and lobby groups in many other industry sectors publicly questioning the priorities of government in an era of cutbacks, outsourcing and privatisation. Open political opposition from individual members of staff is not something that the conservative world of the public services is used to, and is likely to meet with a hostile response. Union action seems to me to be both safer for the individual and more effective if the model of the teachers' unions⁷ is considered. On the other hand this does not excuse the 'shoot the messenger' reaction that Obendorf got and it raises the question of professional freedom to make a judgement adverse to the policy directions of the agency in which professional officers are employed, a matter to which I shall return.

David Obendorf concluded his cases⁸ against the department in an out-of-court settlement and left the public service. John Millard, the journalist who exposed the inside deal-making between ABC producers and commercial sponsors of programs kept his job, just. From 1992 Millard, who worked on

the program, *The Investigators*, raised concerns about both the potential threat of the deals to the independence of those programs and the ABC's reputation, and the actual, compromising, effects. Like David Obendorf, over a two-year period, he went through proper channels, reporting his concerns and actual instances to the executive producer of his program and to the Head of Features, to staff meetings, then to the Head of ABC TV, and finally to the Board through the staff-elected director Quentin Dempster. The Board refuted the allegations and no more was heard until Channel Nine's *Sunday* program picked up the story, over a year later. When it was reported that ABC management was surprised by the claims, John Millard rang up the radio program *AM*, to tell them, on the contrary, management had been aware of them for nearly two years.

As a result of the story going public, there were reviews of editorial policy and inquiries into the allegations in the ABC, and in the Senate, in which Millard participated with the public and solid backing of his union, the Media, Entertainment and Arts Alliance. Throughout the furor he kept in touch with ABC staff by broadcast email and received support from many staff members who also expressed concerns about the ABC's reputation and the subsequent attempts to make him redundant when *The Investigators* was axed. This support was demonstrated when 76 Sydney news and current affairs staff in a letter to the Managing Director, Brian Johns, demanded that he take action against the three managers after an inquiry⁹ made adverse findings about them. Johns declined. In the end Millard reached a settlement with ABC management and returned to a new job in ABC television in late 1996 and the sort of shows about which he had first raised concerns, *The Home Show*, *Holiday*, and *Everybody*, have disappeared. So too has *The Investigators*.

De Maria identifies a number of factors which enabled John Millard to survive the attempts by ABC management to silence and then get rid of him. They are Millard's own sense of public duty, the support of his union, neutral external investigators and the strong media interest in the story (p. 129). The strength of the union within the ABC, the strong base of support amongst staff who identified with his stand, and the media scrutiny were mutually reinforcing factors which supported John Millard as an individual. They also made clear to the ABC management the extent of disquiet about the trend to commercialisation within a revered, public institution. The wider context of uncertainty about public funding continuing under the incoming conservative government no doubt helped concentrate the minds of ABC management on the need to muster all the public support it could.¹⁰ The political dimension and the strength of the support of other staff and backing of unions in two of these cases enabled the individual whistleblower to survive, more or less. I emphasise the part played by organised (political) support because it flags the

role professional associations and other interest groups can play in matters of public debate.

The Nitschke and Millard cases suggest a mode of action different from individual public disclosure. By contrast the cases of the three academics, concerned with student assessment and financial irregularities, and allegations and counterallegations of improper behaviour do not have the same political dimension. Individual public disclosure was practically the only option to address their concerns which had met with no useful response. That pursuit was personally disastrous for the three individuals who were isolated by a hostile university management, and for whom union support proved a weak reed even where they had the support of other staff. What these cases demonstrate is the relative lack of an accountability framework in Australian universities, where the collegial system is effectively being replaced with corporate management structures which have little in the way of formal accountability to external authority and are resistant to internal questioning.

I want to turn now to the Heiner affair, notorious in the archival world.¹¹ The account which De Maria gives of the convoluted sequence of events known as the Heiner affair is as clear as will be found anywhere, and is notable for its focus on the destruction of the Heiner inquiry documents as the centre of the matter. That said, the Heiner affair seems rather different from most of the other whistleblower cases which De Maria presents. The whistleblower in the case was not a member of staff in the John Oxley Youth Centre (JOYC), where the allegations of wrongdoing about the manager, Peter Coyne, originated. The whistleblower was Kevin Lindeberg, a senior organiser with the Queensland Professional Officers Association who represented Coyne in his attempts to deal with those allegations. Secondly, the issues which Lindeberg pursued were not what was going on in the juvenile detention institution but were instead the conduct, termination, and fate of the records, of the inquiry into the allegations, which embroiled the head of the Queensland Department of Family Services (Ruth Matchett), the Crown Solicitor, the Cabinet of the Goss government, the Queensland State Archivist and the Criminal Justice Commission.

The allegations of misconduct, including apparently abuse of inmates of the John Oxley Youth Centre were pursued by the union representing the staff, the Queensland State Services Union. After two years of complaints and 30 resignations, the then head of the Department of Family Services set up the inquiry headed by Heiner. The account of the JOYC as 'heavily factionalised' (p. 135) with major management and operational problems sounds very like the environment which De Maria describes elsewhere as 'just the setting for

whistleblowing' (compare it with the description of the Launceston Animal Health Laboratory, Dr Obendorf's workplace, p. 61). However by De Maria's definition, the staff at JOYC were not whistleblowers. They made complaints about the JOYC's management to their union, but thanks to the destruction of the records, they were not made public and since the inquiry was aborted, have never been tested. In De Maria's terms the staff made 'secondary reports' or 'disclosures in confidence' which, if there were allegations of abuse of inmates, seems a reasonable course of action. By comparison, Lindeberg's battle to get a proper hearing for Coyne and his very public pursuit of the attempted suppression of the inquiry, which cost him his job as QPOA organiser, meets De Maria's categorisation including the requirement that the whistleblower suffers. In practice the distinction seems rather arbitrary.

Coyne has never been able to clear his name but accepted a settlement,¹² while Lindeberg has pursued the Queensland Labor government and the Criminal Justice Commission for their part in the affair ever since. To this day no satisfactory explanation of the reason for the Cabinet intervention in the Coyne dispute has been forthcoming. De Maria refers to the 'traditional intimacy between Labor governments and unions (restarted again in Queensland...after thirty-two years)' (p. 145) as part of the atmosphere of the case, but the attempt to get a figleaf of legality from the State Archivist's authorisation for the improper destruction of the Heiner records seems more the mark of an inexperienced administration, panicking at the possibility of legal action. What is clear is that neither the Heiner Inquiry nor any of the subsequent investigations did anything about the problems at JOYC, so none of the actions taken addressed the original issues.¹³

The Heiner affair is testimony to the problems caused by the politicisation of the upper echelons of the public services. What I mean by that is the replacement of a permanent public service, part of whose role it was to give independent advice to ministers, by a public service managed by contract employees dependent on the favour of ministers to continue their careers. The immediate political context of the destruction of the Heiner Inquiry records was the advent of a new state Labor government after an absence from office of more than 30 years. As De Maria points out several public service departmental heads were quickly replaced by the new Labor government. After such a long incumbency by a conservative government which firmly enforced its demands on the public service, the incoming administration's reaction is understandable. However it compounded the effect of politicisation and created a problem for those public servants who adhered to the supposed Westminster tradition of giving frank and fearless advice.¹⁴ In addition it reinforced the partisan nature of Queensland politics which seems to have

infected the Criminal Justice Commission (CJC), widely seen by conservatives in Queensland as a tool of the 'other side'. The actions of the Queensland State Archivist and the CJC in the Heiner affair should be seen in that context.

This goes back to the question raised earlier of the role of professionals in government service prompted by the Obendorf and Nitschke cases. I would argue that one thing which distinguishes the role of a professional in the workplace is the requirement to exercise professional judgement even if this conflicts with the policy directions given by management. Put bluntly, the professional officer needs to be able to tell the boss, 'with respect, in my professional opinion, you are wrong', without fearing for her/his job. The change to extensive use of contract employment has seriously undermined the basis for giving fearless, professional advice. This applies to recordkeepers in the workplace as much as to any other profession, and warrants some frank discussion in our ranks about the role of our code of ethics, the boundaries of our responsibilities, the public interest *versus* organisational interests, as noted earlier, the matters which exercise the minds of whistleblowers.

Another aspect of the Heiner affair, in common with several of the cases which De Maria describes is the part played by legal advice and the investigatory agencies. De Maria argues that the investigatory agencies have, most often, been incompetent when called in to deal with the allegations made by whistleblowers.¹⁵ The Heiner affair shows legal officers of the Crown acting in a questionable way, even improperly, and the CJC failing to address several instances of misconduct or worse. The experience of the Royal Melbourne Institute of Technology academic, Kim Sawyer, with the legal profession up to the Chief Justice of Victoria is almost beyond belief.¹⁶ In part the problem arises from the adversarial legal system Australia has inherited from Britain and its impact on the collection of evidence. In his outline of the typical progress of the whistleblower's case De Maria identifies particular problems for whistleblowers during and after investigation of their allegations:

After a period of time, investigations cease (but reprisals rarely stop at the same time). Because evidentiary rules are stacked against the whistleblower and they are unresourced at the critical time of evidence-collecting, investigatory conclusions and findings are often disappointing to the whistleblower, who has a strong sense of not being vindicated. Whistleblowers usually report a worrying level of incompetence and indifference in the investigatory authorities (p. 23).

This is the pointy end for recordkeepers. The rules of evidence aim to provide objective, accurate witness to what happened. Under the adversarial system, if evidence is gathered in a partisan way it will be judged by the rules to be contaminated. The problem for whistleblowers is that they become participants

in an adversarial legal process so their testimony becomes part of that adversarial ammunition. The adversarial nature of the Australian judicial system militates against an objective uncovering of the truth although the laws of evidence are premised on that fiction.

Where recordkeeping has a role is in the making and keeping of evidence to record what happens in the workplace. Recordkeeping which is integrated into the business procedures and occurs as part of the normal routine should be an accurate reflection of the activity of the organisation. Of course if individuals are determined to perpetrate fraud, theft or other criminal acts, then policy, procedures and recordkeeping rules will not of themselves stop them. That said, well-constituted procedures supported by good recordkeeping will present a barrier to casual misconduct and should generate some evidence of breaches of normal practice under conditions of regular monitoring. It is also the case that misconduct which is deliberate and criminal in intent will generally include destroying the traces it leaves. No documentary evidence may remain to be used as testimony. While no records or poor recordkeeping is symptomatic of poor business practices, if not of actual misconduct, it is not incontestable evidence. It is evidence in the negative.

For the whistleblower this presents real problems, likewise for the investigator after the event. The personal testimony of the whistleblower becomes crucial evidence in itself, but inevitably will be caught up in the adversarial legal system which will demand corroborative evidence. The cover-up and reprisals response which De Maria describes then play a spoiling role to limit what corroborative evidence can be collected. So it is not surprising that the immediate outcome of an investigation into the allegations is unsatisfactory to the original complainant and leaves him/her with an imperative to validate his/her own position by pursuing the matter.

De Maria argues the evidentiary rules are 'stacked' against the whistleblower. In fact it is the nature of most Australian organisations which is against the whistleblower. They are authoritarian, hierarchical, and tend to be defensive and unresponsive to both external complaints and internal reports of misconduct, incompetence or negligence. The problem is their inherently undemocratic nature and as workplaces they generally prove in practice to be, as De Maria terms it, '[the] most inhospitable of rights environments' (p. 35). It is also very hard to argue with his view that there has been a serious deterioration in ethical standards, whether it is from the example of the National Australia Bank's response to adverse legal findings in the Maher case – the bank is continuing to appeal against findings of criminal misconduct, as if they were just some legal technicality – or the latest company bankruptcy saga in which employees' entitlements have disappeared.

De Maria has put a body of evidence before us of the response of the government bureaucracy to serious criticism or complaint about its actions, whether those actions are deliberate wrongdoing by individuals, systemic failures or negative consequences of policy decisions. While it is easy to say his accounts are biased in favour of the whistleblowers he regards as heroes, those accounts cannot be dismissed out of hand nor can the pattern of denial, resistance and cover-up in the bureaucratic response be ignored. De Maria is quite pessimistic about the possibilities of change but the fact that so many individuals are willing to stand up for what they think is right, on the contrary, is evidence that people do not accept a declining standard of ethical behaviour and want to bring the wrongdoers to account. However the method of the whistleblower he advocates – individual public disclosure – is seldom successful in dealing with what are mostly systemic problems. Where the problems arise as a consequence of policy changes, it seems to me a political campaign is what is needed, and the methods of dissent (to use De Maria's term) are more likely to succeed. But if the internal processes for making complaints prove fruitless, and if the staff association or union were weak or hostile, then the only remaining course of action may be public exposure. Unless such action (and the activist) is backed by some form of organisation, the individual whistleblower is exposed to considerable risk. John Millard survived attempts to discredit and remove him because he continued to put his case to his fellow staff members and unionists to counter the attacks on his credibility. In turn they sustained him.

Where it is a case of misconduct rather than policy differences, the path is more difficult, not least because everyone's perception of the misconduct will not be identical. This was one conclusion of the study which the NSW Independent Commission Against Corruption (ICAC) made in 1994 to identify what public servants understood by 'corruption'.¹⁷ What is illuminated by this study is the variety of perceptions of what constitutes corruption or harmful workplace behaviour and the variety of reasons people gave for not taking action. Well-based cynicism about the likelihood of responsive action was prominent amongst them. Given the experience of such prominent bureaucratic critics of government actions as the former Keeper of the Victorian Public Record Office (Chris Hurley) or the former Victorian Auditor-General (C Baragwanath), no one can be blamed for cynicism or fear about the reaction of the government of the day. In both cases the powers of the office were attacked and the individuals effectively sidelined or removed. In both cases there were public campaigns to defend the accountability role of the office, and in the case of the Auditor-General, the campaign was a factor in the subsequent electoral defeat of the Kennett government.

In the case of the Victorian Public Record Office, at the time the heritage role of the public archival institution was counterposed to the role of underpinning the accountability of governments to their electors through the public record. There is no reason based in archival practice to counterpose them but the implicit political message was quite clear and the impact felt elsewhere as the struggle to establish and maintain the independence of archival institutions in both Australia and New Zealand testifies. The uncomfortable conclusions, that support for accountability is little more than lip service and that accountability is always for someone else, are hard to avoid.

Over the past decade the Australian recordkeeping profession has argued that recordkeeping constitutes a significant element in the accountability framework. If the tasks of identifying recordkeeping requirements to support the accountability needs of organisations are performed adequately, the means of monitoring compliance with the regulatory regime should exist. As the McKemish and Acland paper points out, the regulatory framework for government recordkeeping is now significantly stronger than at the time of the Heiner affair, with publicly promulgated standards and procedures backed by government archival authorities with more legislative powers than ever before.¹⁸ On the other hand, the individual recordkeeper within an organisation is seldom in a position senior enough to enforce compliance with the recordkeeping regulations. Australian archival institutions have, to date, almost never pursued breaches of their legislation in the courts, evidence of their lack of clout. So it has to be asked, could something like the authorisation of destruction of the Heiner Inquiry records happen today?

If the Cabinet Office in any Australian jurisdiction today asked the head of the government archival authority to appraise the historical value of records of an obscure investigation into misconduct in a small state institution, what would the answer be? Bearing in mind that almost all senior public officials hold office on a contract basis, would any be brave enough to respond, that now the Cabinet had asked the question, the records probably were of historical value? Given the argument that one of the principal reasons for retaining records is to maintain evidence of rights of persons and organisations before the law, would the appraisal question today be put so crassly?

In fact we cannot know. Just as we have no basis for knowing what the appraisal decision-making processes were in the Heiner case, generally we still do not know what are the deliberations of the highest level of management in our archival institutions. Here are two instances. The secret, and unauthorised, NSW Special Branch files discovered in 1997 were appraised and reviewed through a working party established by NSW Police with representatives from

Police, State Records, the Ombudsman's Office, the Council for Civil Liberties, and the then Privacy Committee of NSW, so compared to most appraisal exercises there was a high level of public consultation. However, what the final disposal recommendations, including custody arrangements, put to the Board of the Authority were, and what the Board's deliberations about them consisted of, are not publicly known. Approved disposal schedules are available as policy documents under Freedom of Information, as are the proceedings of the Board, but there is no practice of releasing minutes or decisions as a matter of course.¹⁹ Secondly, according to rumour the major reappraisal of holdings happening now in the National Archives of Australia is based on considerations of, amongst other factors, quantity, and again according to rumour, it is immigration and World War I veterans' records which are targeted. I say rumour because these discussions are happening behind closed doors, there is no obligation to make them public, and if it has been discussed by the National Archives Advisory Council, its proceedings are not routinely available.²⁰

If something like the Heiner situation happened again, the head of the archival institution refused authorisation and was threatened with reprisals, what would be the response of the professional associations? As De Maria's accounts make clear, where there was consistent and active public support from staff and unions the whistleblower stands a much better chance of surviving the process. Would the ASA or the RMAA or the epigoni of the Australian Council of Archives be able to mount a campaign of public support? What alliances would the associations invoke to put pressure on the government? If the government argued a case for destruction which was based on preserving the confidentiality of the disclosures or protecting the reputation of persons subjected to unfounded allegations, how would the recordkeeping profession deal with the argument? Would the argument invoking the greater good of the public right to know over the rights of the individual prevail? In the Heiner case, the argument for preserving the records rests first on the individual's rights, Coyne's right to have his day in court *versus* the government of the day's perceptions of its good. If the ASA responded with the assertion that archivists are experts in managing public access and keeping records secure, why should the public, or the government, trust them sufficiently to preserve the records?

The Heiner case of appraisal and destruction has been represented as a clash between two opposing views of the archival mission, with the weight of professional recordkeeping opinion against the destruction. In fact it is possible to mount a contrary case based on the rights of other parties in the JOYC dispute which, I think, illustrates that the rights and accountability arguments are not clear-cut. It is something which European archivists have given much thought to, especially following the fall of the former Communist régimes in

Eastern Europe, as was demonstrated to the ASA conference in Wagga Wagga in 1992 by the General State Archivist of the Netherlands, Eric Ketelaar.²¹ On a smaller scale the fate of the Special Branch files in various Australian state police forces has raised the same kind of dilemmas.

Too often it seems to me the greater good argument, whether based on accountability or historical significance, is invoked in an unreflecting, moralistic way. Frequently the passage of time is relied on to sort these kinds of difficulties out and perhaps it can, but that ignores the philosophical dilemma. Nor does hiding the records away help engender public trust and understanding. Open debate about these sorts of hard instances where the community's views are canvassed seriously would provide an opportunity to raise the profile of the public recordkeeper and build a stronger relationship with the public whose accountability requirements we purport to serve. The current public concerns about protection of personal information in the context of developments in Internet-based business and inadequacy of statutory safeguards in the private sector could be addressed by the professional recordkeeping associations to argue for better legislative protection and better recordkeeping to support the rights of privacy. Unfortunately (at the time of writing) the criticisms from the ASA of the proposed privacy protection legislation in NSW and the Commonwealth have focused on the research community's access to existing holdings, at the expense of the current recordkeeping issues.²²

Such a debate I think would highlight that recordkeepers have lagged behind other professions in developing a process and structure to deal with ethical dilemmas which most research institutions have long since put in place.²³ When community expectations are invoked as part of the regulatory framework to which organisations should comply, they apply to archival institutions as much as any other government agency and the expectations are not simply about the existence of records, but about the behaviour of public offices. If the institutions and the recordkeeping profession were seen publicly defending both individual rights of access and protection of privacy, as well as the longer term needs of the research community, both would be in a better position to defend the independence of the public archival institution.

If as De Maria asserts, there has been a deterioration in ethical standards, then strengthening the accountability framework is one way of responding. While there are now more mechanisms for making complaints and getting a hearing, from the Ombudsmen's offices, various administrative decisions review tribunals, to FOI and privacy protection legislation and anticorruption bodies, these are not available in all jurisdictions and constitute quite uneven protection. They apply to the public sector, not to private enterprise, and the gap is growing through privatisation of public utilities and government

functions and outsourcing of government services. This has removed many socially necessary activities from the scrutiny of elected representatives and the public. The trends respecting accountability are contradictory.

However, to be effective the accountability mechanisms need adequate recordkeeping to provide the means of monitoring compliance and rendering account. This is not a case for individual heroic action but persistent and systematic proselytising, word and deed by the recordkeeping profession. It requires public advocacy for accountability and adherence to ethical standards and prompt responses to public concerns about behaviour of government and private organisations affecting individual rights and public obligations. It needs transparency and accountability in recordkeeping decision-making to engender public trust in archival institutions and understanding of recordkeeping processes. There are allies to be had in other professions and related areas of work, from other information managers, auditors, risk managers, the legal profession, to everyone who needs good recordkeeping to do their work, and the civil and social rights activist organisations. Above all it means that recordkeepers must lift their heads from the desktop to take in what is happening in society and reflect those concerns in their own understanding.

One of the virtues of the records continuum model of recordkeeping work is the consciousness it brings of the need to look beyond the boundaries of the organisation to the views and expectations in its community context. Equally the external stakeholders should have the means to be able to look into organisations, especially in the public sector, to perceive their processes and judge them against community standards of behaviour. This two-way view should be brought to bear on the recordkeeping of organisations so their behaviour may be monitored by the regulatory authorities. As I said earlier, sound procedures and recordkeeping will not stop determined misconduct, but they can make clear that there were pertinent standards and that misconduct was therefore in breach of those standards. Anything less than this understanding of the purpose of adequate recordkeeping would justify the antiquarian view of records work which the Queensland CJC has attempted to foist onto our profession.

ENDNOTES

1 I should acknowledge at the outset that this article has grown out of long-running discussions with a number of colleagues over some years, and would like to thank especially Barbara Reed whose generous advice and criticism on this occasion has been invaluable. Nonetheless the views expressed here, and the mistakes I have failed to avoid, are my own.

2 See the numerous websites on *The Insider* for more information, such as www.tobaccofreekids.org/reports/insider.

3 This University of Queensland study, funded by a research grant undertaken in 1993–95, was known as the Queensland Whistleblower Study. More than 350 people were initially identified and subsequently refined to 102 (Queensland only).

4 This is Kevin Lindeberg and the case is the one known in archival circles as the Heiner affair.

5 The same Philip Nitschke was later to come to national notice as a champion of the NT's euthanasia laws.

6 De Maria identifies Nitschke's address to the NT Public Health Association in July 1993 as one of the first public statements made in Australia about whistleblowing.

7 For example, the NSW Teachers Federation has successfully made class sizes, teacher-student ratios, hours for preparatory work and curriculum development all industrial matters although they are concerned with the content and quality of their work, not just their working conditions.

8 Obendorf made complaints to the state Ombudsman about process irregularities in handling his questioning of policy and to the Human Rights and Equal Opportunities Commission about homophobic or HIV-phobic behaviour towards him in the workplace.

9 The Coleman Inquiry was headed by Philip Coleman, a barrister appointed to investigate independently the allegations Millard had made.

10 Around this time there were large public rallies in several capital cities to defend the ABC's funding and independence after public accusations of bias from members of the newly elected conservative government.

11 The Heiner affair has been canvassed in Australian recordkeeping forums at some length. Rather than repeat those discussions I refer readers to the archives of the Aus-archivists listserv particularly for the statements made by the Council of the ASA and the postings of Chris Hurley, at www.asap.unimelb.edu.au/asa/aus-archivists/maillist.htm and also to the paper presented to the 1999 conference of the ASA by Sue McKemmish and Glenda Acland, 'Archivists at Risk: Accountability and the Role of the Professional Society', available from the ASA's website at www.archivists.org.au/events/conf99/mckemmish_acland.html.

12 De Maria's account of the Coyne case makes an interesting comparison with the case of the Director and Deputy Director of the Australian War Memorial in which De Maria argues that they were effectively hounded from their positions by malevolent 'whistleblowing' – the title of the chapter is 'The Dark Side of Whistleblowing'. Unlike the other cases he presents, in these two, the junior staff made allegations against the senior managers which resulted in the latter losing their positions. There is no obvious reason in De Maria's analysis for the success of apparently ill-intentioned whistleblowing in removing good managers when well-intentioned public disclosures have less success generally in eradicating wrongdoing, but it fits with his vision of widespread ethical collapse.

13 Remarkably, Coyne applied for, and was rated first by the selection panel for, the readvertised position of manager of JOYC but the head of the department, Ruth Matchett, who had presided over the destruction of the Heiner records, rejected the recommendation.

14 For an analysis of the politicisation of the public service, based on a survey of the attitudes of senior public servants under contract, see the paper 'Changing Government and Constant Ethics' given by the former Auditor-General of NSW, Tony Harris, to the NSW Public Sector Corruption Prevention Committee Inc., June 1999, available at the A-G's website, www.audit.nsw.gov.au/agspeech/ethic29699.htm.

15 The worst case De Maria describes is that of Mick Skrijel with the police forces, state and federal, and subsequent inquiries by the National Crime Authority – see pp. 160–75.

16 Kim Sawyer reported in his testimony to the Senate Committee investigating unresolved whistleblower cases, that ‘The Chief Justice of Victoria took 442 days to decide that a professor and three lecturers were not members of the University’ and dismiss his case, see p. 104.

17 The ICAC survey, *Unravelling Corruption: A Public Service Perspective*, Redfern, April 1994.

18 McKemmish and Acland, op. cit.

19 The Manager, Government Services has informed me that State Records intends to make their disposal instruments accessible on their website, which is admirable, but at present you have to know it exists to be able to ask.

20 The papers of the National Archives Advisory Council are, of course, available under FOI. On inquiry, I was informed that consideration would be given to waiving FOI procedures and releasing papers of the National Archives Advisory Council on a particular subject if a compelling interest could be demonstrated.

21 See the introduction and article, by Eric Ketelaar, ‘The Right to Know, the Right to Forget: Personal Information in Public Archives’, translated by Louise Anemaat, *Archives and Manuscripts*, vol. 23, no. 1, May 1995, pp. 8–17.

22 See the NSW Branch of the ASA’s letter to the NSW Privacy Commissioner, criticising the proposed code of practice in relation to archival collections (copies distributed at the branch meeting on 28 June 2000) and the ASA’s submission to the Senate committee scrutinising the Privacy Amendment (Private Sector) Bill 2000. I must add that I thought the criticisms of the NSW Branch submission of the proposed arrangements were well-founded, it is nonetheless a pity that the archival community is seemingly at odds with the concerns of the privacy lobby.

See also the Aus-archivists listserv discussion (Balancing the Right to Privacy and the Right to Know and onwards) started by Nicola Forbes on 7 March 2000 at www.asap.unimelb.edu.au/asa/aus-archivists/msg01770.html.

23 It is not as if the profession has not discussed these matters, see *Ethics, Lies and Archives: Proceedings of a One-day Seminar...by the Canberra Branch of the ASA, 1993* (edited by Stephen Yorke and others, Canberra, 1994). We have both experience and expertise to bring to bear, why don’t we do it publicly?