

The Commonwealth's First Archives Bill 1927

Ted Ling

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Most Australian archivists will be aware that the Commonwealth's first Archives Act was passed by Parliament in 1983. What is not so well known is the fact that this was not the Commonwealth's first attempt at implementing archival legislation – a Public Archives Bill had been drafted in 1927. The Bill went before Cabinet in early 1928 and subsequently faltered during the Great Depression.

Introduction

From the earliest days of the Commonwealth there were those who appreciated the need for the establishment of an archival authority to ensure the preservation of official records.¹ Edward Morris, from the University of Melbourne, was one person who was very keen to see such an authority established. On 15 June 1901 he wrote to Atlee Hunt, the Secretary of the Department of External Affairs:

I venture to hope that the Commonwealth Government will at some stage consider the establishment of a Record Office for Australia...The historian of the future will go to the Record Office. What seems unimportant now will be most important then.²

Yet there would be no real progress in attempting to legislate for the creation of an archival authority for more than 25 years.

There were two events that precipitated the drafting of the 1927 Archives Bill. The first was the demise of the publication *Historical Records of Australia*. The series had begun in 1912 under the editorship of Frederick Watson (in whose honour the National Archives of Australia now has the Frederick Watson Fellowship), however, by 1925 it had fallen into abeyance.³

In that same year South Australia passed the *Public Library, Museum, and Art Gallery, and Institutes Act*, thus becoming one of the first Australian administrations to legislate to ensure the preservation of public documents.

The Scott–Wood report

The demise of *Historical Records of Australia* and the passing of South Australia's legislation were prompts for the Parliamentary Library Committee to commission two academics – Ernest Scott and George Arnold Wood – to undertake a report.⁴ On 21 August 1926 they were asked to advise the Committee on a number of matters, principally:

- a resumption of the publication of Australian historical records; and
- the provision of proper facilities for the preservation of papers which were likely to be valuable for historical and other purposes, after their departmental utility had ceased.⁵

It was clear that the establishment of an archival authority to ensure the preservation of public records had been on the mind of at least one Committee member for some time. On 7 August 1923 Kenneth Binns had written to Ernest Scott at the University of Melbourne:

you will be interested to learn that I am hoping to launch shortly on my Committee a proposal for the establishment of an Archives Department, as a branch of the Commonwealth National Library.⁶

The scholars completed their report in November 1926 and it was presented to Sir Littleton Groom in early December.⁷

Scott and Wood were strongly of the view that archival legislation should be passed embodying the following features:

- the establishment of a Records Office under the control of a Keeper;
- the transfer of departmental records to the Records Office once their administrative use had ceased; and
- the Keeper deciding which records would be preserved as archives

and which would be destroyed, and in making such decisions that person would be assisted by an Advisory Board.

The authors felt that only by establishing an archival authority could the preservation of public records be assured. They noted that despite the relative youthfulness of the Commonwealth, some documents had already been lost.

Ensuring the preservation of public records would thus facilitate the resumption of *Historical Records of Australia*. For this reason public access to the records held by the archival authority was not a key feature of the Scott-Wood report. Rather, the authors recommended that the Keeper in consultation with relevant departments should determine if access would take place.

The strong links between the preservation of historical records and the desire to ensure the resumption of *Historical Records of Australia* led the authors to recommend that the Commonwealth's new recordkeeper should also edit the re-emerging publication.

The scholars then went further. Far from recommending that the new archival authority be a branch of the Commonwealth National Library, they suggested that it be a fully independent organisation, with the Speaker of the House of Representatives and the President of the Senate having administrative responsibility for the fledgling organisation. This was clearly not what Kenneth Binns was expecting, as evidenced by his 1923 letter to Ernest Scott referred to earlier.

The Aubrey Holmes report

Soon after the presentation of the Scott-Wood report, another report emerged, although it is not clear whether it arose independently or was prompted by it.

On 4 March 1927 Aubrey Holmes, an employee in the Melbourne branch of the Navy Office, wrote to the Secretary of Defence. Attached to his letter was a sixteen-page report that argued for the introduction of archival legislation and the establishment of a Commonwealth archival authority with offices and purpose-built storage repositories in Canberra and all six States.⁸

Holmes had in fact been bombarding his superiors for several years with suggestions for the establishment of an archival authority and the development of procedures to ensure the preservation of public records.

It is uncertain if Holmes ever saw the Scott-Wood report, however, he was clearly aware of the work of Ernest Scott. One of the notes he sent to his

superiors included a press clipping describing Scott's 1926 visit to a number of international archival institutions.⁹

The central tenets of Holmes' report were that Commonwealth archival legislation should be passed and a position of Chief Archivist should be created. Further, to ensure the preservation of historical government records, their destruction should only be undertaken with the approval of a committee comprising representatives from the archival authority and government departments.

Holmes maintained that archives should be publicly accessible, although his proposed release mechanism was indeed very curious. He suggested that all records up to 1881 should be available immediately and the release date would subsequently advance by one decade every ten years thereafter.

The position of Chief Archivist features prominently in Holmes' report and Robert French has argued that Holmes sought the appointment for himself. This is probably true. Holmes doubtless sought other accolades but, sadly, he was to be disappointed. A request to the Secretary of Defence that Holmes' ideas were worthy of recompense drew a curt response:

the need for proper maintenance of archives is fully appreciated by all responsible public officers, and I feel that while Mr Holmes' interest in the matter calls for commendation, his suggestions are not worthy of monetary reward.¹⁰

Holmes received nothing for his endeavours. Nor does it appear that his report had any influence on the Parliamentary Library Committee as it was never mentioned in the minutes of their meetings. Certainly, it was not accorded the status of the Scott-Wood report. This is unfortunate in that it had much to commend it and its recommendations were in some respects quite far reaching.

The 1927 Public Archives Bill

The Library Committee was clearly supportive of the Scott-Wood report. At its meeting on 16 November 1927 the Committee approved the report's recommendation that a draft Archives Bill be prepared and requested Groom to contact the Crown Law Office to arrange it. Groom did so and, with remarkable haste, the draft Bill was ready for scrutiny by the Committee in early December.

The Bill was drafted to ensure the preservation and publication of historical records and it should be viewed in this light. Its emphasis was on public records and issues involving their preservation, publication and, to a lesser extent, access. How these records were created and managed was not considered.

The new archival authority would not be given a legislative recordkeeping role.

The Bill contained a number of noteworthy features and its coverage was considerable. All records deemed by relevant Ministers to be of historical value would, once their administrative use had ceased, be transferred to the Archives. The Archivist was then responsible for their custody, control and preservation.

The Bill's definition of public documents included virtually all known record types. In this context it borrowed heavily from the 1925 South Australian Act. All agencies of the Commonwealth Executive (Public Service) were encompassed by the Bill, even statutory authorities and all Commonwealth territories, although not the Parliament or the judiciary.

Records would be accessible by the public, although the Archivist could decide that some records would not be released. The Bill contained no reference to an automatic open access period, nor were any exemptions to access actually specified. Rights of appeal when access was denied were of course unknown at that time, however, the Bill did allow the President or the Speaker to direct that exempted documents could be made available.

To further assist the publication of historical records the Archivist could accept the transfer of such records from State administrations, although there is no indication that any consultation with those administrations had taken place. The Archivist could also acquire by gift or purchase any records deemed to be worthy of addition to the collection.

And last, the Bill's most unusual feature was that the archival authority would be an independent entity with the Archivist reporting directly to the Speaker of the House of Representatives and the President of the Senate. In their report Scott and Wood were emphatic on this point. They noted that:

the suggestion has been made that the records and publication department should be made into a branch of the Commonwealth Library. We are not impressed with the expediency of this course. The work is quite different from library work. It requires to be done...under the authority of an Act of the Commonwealth Parliament. It should be, within its defined scope, independent.¹¹

Placing the archival authority under the control of the Speaker and President was an unusual recommendation. At first glance it would appear that it might have been made in order to curry favour with the Library Committee's chairman, the Speaker of the House of Representatives. However, there was more to it than this. While working on the report Scott wrote to Wood:

...this is confidential - I know that there is a movement to bring both the archives and the records publication under the direction of the Parliamentary library. We do not want the man to be subordinate, but to run his own department. It is too big and important a work to

be made subordinate to the library. If Binns, the Parliamentary librarian, calls on you, please be cautious. His idea is to get control. I think that most undesirable.¹²

Scott and Wood were very much of the view that responsibility for the archives and editorship of *Historical Records of Australia* should be undertaken by the same person. They also felt that such a position should be allocated to an historian, not a librarian. Having the head of the archival authority report to the Speaker and President would recognise the status of the authority and the importance of its work. Scott's plea to Wood for caution in their dealings with Kenneth Binns indicates that the scholars were also intent on thwarting Binns' ambitions.

The fate of the Archives Bill

The Library Committee considered the text of the Bill during a two-day meeting on 7-8 December 1927. While they endorsed most of the Bill they rejected two of the proposed clauses. First, clause 6 stated that Ministers were required to place those public documents no longer having any further administrative use with the Archivist, if the Archivist decided that those documents were of historical value. The Committee felt that it should be Ministers who decided which documents were of historical value. Ministers should consult with the Archivist, but it was they who made the decision.¹³

Secondly, clause 7 basically stated that public documents could not be destroyed or sold without the Archivist's approval. The Committee felt that responsibility for approving the destruction of such documents should be transferred to the Governor-General who could make regulations to this effect. The reference to the sale of documents was deleted.

With these modifications the Committee approved the text of the Bill and Groom was asked to forward it to the Prime Minister's Office after it had been reprinted. The Bill was revised and reprinted on 4 January 1928. It was a brief document, only three pages long. A copy of the Bill as originally drafted, together with the handwritten modifications made at the Committee's request, is included overleaf.¹⁴

Cabinet considered the Bill in March 1928 and again in April. However, before proceeding they decided that it would be advantageous to know more about the systems of operation that applied in other British Commonwealth dominions, in particular Canada and South Africa. Groom advised the Prime Minister that the Bill was in fact modelled very closely on Canadian legislation and that careful consideration had also been given to legislation in South Africa, as well as the 1925 South Australian Act referred to earlier.¹⁵ It was to no avail. The Prime Minister's Office proceeded to contact Canada and South Africa.

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A BILL
FOR
AN ACT

Relating to Public Archives.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Public Archives Act 1927*.

2. In this Act, unless the contrary intention appears—

"Public Archives" means Public Documents placed under the care, custody and control of the Archivist, or acquired or purchased by him, under the authority of this Act;

"Public Documents" means all manuscripts, pamphlets, books, records, papers, maps, drawings, plans, photographs, prints, pictures, and all other historical material of any kind, nature and description of any Department, Office or Branch of the Public Service of any Territory under the Authority of ~~or Territories~~ under the Commonwealth including a Territory governed Mandate, or of any public authority created by the Parliament;

"the Archivist" means the Commonwealth Archivist appointed under this Act;

"the President" means the President of the Senate;

"the Speaker" means the Speaker of the House of Representatives.

3. (1) There shall be a Commonwealth Archivist who shall be appointed by the Governor-General.

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(2.) The Commonwealth Archivist shall be appointed for such term and upon such conditions as the Governor-General determines.

4. The provisions of the Commonwealth Public Service Act 1922 and of any Act amending, or in substitution for, that Act shall apply to the appointment and service of any officers required to be appointed to assist the Archivist.

Application of Public Service Act.

5. (1.) The duties of the Archivist shall include—

Duties of Archivist

(a) The care, custody and control of Public Archives.

(b) The overseeing and direction of all Officers appointed to assist him.

(c) The compilation, printing and publication from time to time of such portion of the Archives of the Commonwealth and such records, documents, papers and other historical material relating to the several States as are authorized by the President and the Speaker.

(d) The making of recommendations from time to time, to the President and the Speaker of any action, which, in the general opinion of the Archivist, in connexion with the collection, preservation or distribution of any written matter relating to the history and records of Australia.

(e) The presentation of an annual report to the President and the Speaker.

(2.) In the performance of his duties under this section the Archivist shall be subject to the directions of the President and Speaker.

6. Every Minister of State administering a Department, Office or Commonwealth authority, shall place under the care, custody and control of the Commonwealth Archivist any Public Documents which in his opinion no longer required for current use and are of historical value by the Archivist.

Public Documents

(1.) Where it is proposed to sell or destroy any public document of any Department, office or authority of the Commonwealth, the Officer-in-charge of that Department, office or authority shall give notice in writing to the Archivist of that proposal.

(2.) The Archivist, or any person authorized in writing by him, may within two months after the date of any notice given under the last preceding sub-section, take possession of any documents referred to in that notice.

(3.) Any documents taken possession of by the Archivist under the last preceding sub-section shall be dealt with in the manner decided by him.

(4.) Where possession of any public document is not taken possession of as provided in sub-section (2.) of this section, those documents may be sold or destroyed by the Department, office or authority to whom they belong.

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which, after consultation with the Archivist are regarded by the Minister as being of historical value

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Any officer who sells or destroys, or causes to be sold or destroyed, any public documents in contravention to this section shall be guilty of an offence.

Where any Public Documents have been placed under the control of the Archivist, the Minister administering the Department, office or authority from which they were received, may, from time to time, by notice in writing addressed to the Archivist, direct that the documents shall not be open for public inspection, or shall be open only for such inspection as he specifies in the notice.

(1.) Public Archives shall, subject to this Act, be made accessible to the public.

(2.) The Archivist may, in his discretion, withhold from public inspection any particular documents.

Where any documents are withheld from inspection under the last preceding sub-section, the Archivist shall produce those documents for inspection by any person named in a direction in writing by the President and Speaker authorizing the production to that person of those documents.

The Archivist may, with the approval of the President and the Speaker, acquire by gift, or purchase out of moneys voted by the Parliament for the purpose, all such records, documents and historical material as he deems to be of sufficient value to justify their preservation among the Public Archives.

The Governor-General may arrange, upon such terms as are agreed upon, with the Governor-in-Council of any State, for the delivery of documents of historical value of that State, to the Archivist, to be placed under his care, custody and control.

The Governor-General may make Regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out and giving effect to this Act, and in particular—

- (a) The establishment of an office for the storage of Public Archives;
- (b) The admission of the public to the Office for Public Archives and the inspection by the public of the Public Archives;
- (c) Transfer of any documents from the custody of any Government Department to the Archivist's Office;

Any person who contravenes any of the Regulations made under this section shall be liable to imprisonment for a term not exceeding three months, and any person who contravenes any of the Regulations made under this section shall be liable to a fine not exceeding twenty pounds.

By Authority: H. J. GREEN, Government Printer, Canberra.

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Inspection of Archives

Public Archives accessible for public use

Acquisition of records, etc.

Transfer of State documents of an historical character

Regulations

1, and

(2) the destruction of public documents not required to be preserved as Public Archives or otherwise;

providing penalties not exceeding twenty pounds for any contravention of any regulation made in pursuance of this Act

The requisite advice did not arrive until late 1929 and by that time the Great Depression had begun and the government had fallen. The Bill did not go before Cabinet again and never reached Parliament.

With the change in government came a change in the composition of the Library Committee. In early 1930 Binns prepared a briefing for the incoming Committee that dealt with *Historical Records of Australia* and the matter of archival legislation. He presented the Committee with several options:

- lobby for the Bill to be enacted;
- re-examine and review the Bill; or
- defer the matter in view of the present financial circumstances.

The Committee considered Binns' report on 20 March and accepted his last option. On 21 March Aubrey Holmes (ever the optimist) wrote to Binns to ascertain if there had been any progress with the Bill. Holmes' timing was perfect. Binns was able to reply that the Committee had considered the enactment of legislation and the establishment of an archival authority only a few days earlier but, given the precarious financial situation, had decided not to take any further action.

That was the finish of the Commonwealth's first attempt at drafting archival legislation. As an aside Binns wrote:

by the way, what action is your Department making in regard to the transfer of its records and their storage at Canberra? A removal such as that which faces you constitutes a grave danger if care is not taken to see that nothing is destroyed which has a permanent historical value.¹⁶

Binns was probably delighted to see the demise of the Bill. If it had passed a new archival authority would have been established over which he would have had no control. While he was a keen supporter of such an authority, his ambition was that it be part of the Commonwealth National Library. In 1939 he wrote a critique of the Scott-Wood report and the Archives Bill, which provides clear evidence of his feelings. The scholars' recommendation that the archival authority be placed under the administrative control of the Speaker and President he left to the very last. He wrote:

I doubt if the Government would agree to the placing of a new and rapidly growing Department which has no logical relation to Parliament under the control of the President and the Speaker. This form of administrative control is not adopted in other countries.¹⁷

Conclusion

Although slighted by Binns the 1927 Public Archives Bill presented the Commonwealth with the opportunity to be one of the first Australian administrations to legislate for the creation of an archival authority. With its demise the Commonwealth ultimately became one of the last administrations to pass archival legislation in 1983.

ENDNOTES

1 I would like to acknowledge the assistance of Michael Piggott, from the University of Melbourne, who read a draft copy of this paper and provided valuable suggestions, and Graeme Powell, from the National Library of Australia, who answered a number of queries about Kenneth Binns, the Parliamentary Library Committee, its structure and its personnel.

2 National Archives of Australia (NAA): A3955, Folder of selected copies of National Library documents relating to the development of the Commonwealth Archival Authority, 1901-1944, letter dated 15 June 1901.

3 The rise and fall of *Historical Records of Australia* has been outlined in Ann M Mitchell, 'Doctor Frederick Watson and Historical Records of Australia', *Historical Studies*, vol. 20, no. 79, October 1982, pp. 171-97.

4 The Parliamentary Library Committee was established in June 1901 to supervise the Library of the Commonwealth Parliament. In 1927 the chairman was Sir Littleton Groom, Speaker of the House of Representatives. Other members included Arthur Wadsworth, the Parliamentary Librarian, and Kenneth Binns, from the Commonwealth National Library. The National Library of Australia holds the minutes of the Committee's meetings from 1901 to 1960 (box 136).

5 The report was commissioned following a meeting of the Library Committee held on 11 August 1926. A copy of the report is located in NAA: A3955. It has been discussed in a number of publications including HJ Gibbney, 'Prehistory of an Archives', *Archives and Manuscripts*, vol. 4, no. 6, February 1972, pp. 2-7.

6 NAA: A3955, letter dated 7 August 1923. Binns' referral to the Library Committee as 'my Committee' was somewhat presumptuous as he was not the Committee's chairman.

7 The Scott-Wood report was actually in two parts - the first dealt with *Historical Records of Australia* and the second with the establishment of an archival authority and the preservation of public records. In this paper detailed reference is made only to the second part of the report.

8 Holmes' report is located in NAA: A664, Department of Defence correspondence files, item 404.401.58, Proposal regarding disposal of records by A Holmes. The report has already been analysed in some detail in Robert French, 'Aubrey Holmes', *Archives and Manuscripts*, vol. 7, no. 1, August 1977, pp. 28-33.

9 Scott had written an article for the Melbourne *Argus* newspaper, dated 1 May 1926, following an overseas visit.

10 NAA: A664, item 404.401.58, minute dated 28 September 1927.

11 NAA: A3955, Scott-Wood report, page 9.

12 NLA MSS 2490, letter dated 19 November 1926. Ironically Scott's letter is now held by the National Library.

13 It should be noted that while the Scott-Wood report used the term 'Keeper' to describe the person responsible for the archival authority, the Public Archives Bill used the term 'Commonwealth Archivist'.

14 Copies of the printed Bill, both before and after its modification by the Library Committee, are contained in NAA: A2863, Attorney-General's Department Bill files, item 27/55, Public Archives Bill.

15 NAA: A3955, letter dated 10 May 1928.

16 NAA: A3955, letter dated 26 March 1930.

17 NAA: A3955, report dated 25 May 1939.