

# Archivists and Accountability

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In 2004, the author was invited to deliver a paper on professional standards and accountability to the Annual Conference of the Australian Society of Archivists (ASA). Post-delivery, the ASA Council took legal advice and declined to include it in the Conference Proceedings on the grounds that it was defamatory. This action raised issues concerning the ASA's own standards and accountability in handling the expression of views on public issues, which will almost always involve statements that are prima facie defamatory. This case raises the question about the basis upon which ASA (as publisher) deals with such writings – which to publish because an adequate defence at law is available and which to reject. The author sought independent legal advice which affirmed that the available defences against defamation would prevail in this case. This version of the paper is, in substance, the one upon which the legal opinion obtained by the author was based. It has been slightly abridged for reasons of space and incorporates the result of this journal's refereeing and editing processes.<sup>1</sup>

## **What being accountable means**

Being accountable means being:

- clear about your role (who is accountable and to whom)
- clear about your function (for what are you accountable)
- measured (having standards or benchmarks)
- monitored (some method of punishing or correcting deviance).

This paper is not about how good recordkeeping supports accountability. It is about the accountability of those who set the recordkeeping rules. It is about recordkeepers' accountability: their role and function, how their performance is measured, how they are monitored and corrected when they go astray. It says they don't understand their role and function, they don't have benchmarks against which their actions are judged, and there is nothing to correct or punish professional deviation. In short, they are unaccountable.<sup>2</sup>

Like everyone else, recordkeepers are accountable employees. Employers make them accountable.<sup>3</sup> How can they also behave as accountable professionals? Do they, as agents of accountability, have to answer for what they do and how they do it? How should they deal with professional obligations that conflict with employment obligations? Should professional obligations override the terms of a contract of employment? This article examines to whom, if anyone, archivists have a professional accountability outside the terms of their employment – and for what actions.

Transparency International, a Non-Governmental Organisation (NGO) that monitors accountability has said:<sup>4</sup>

When we campaign for greater access ... we must at the same time campaign for improved records management ... There seems little point in having access to information that is chaotic and unreliable.

Does this mean that archivists have an accountability to prevent chaos and unreliability in society? Where is that stated? How would recordkeepers set about it? Does it involve technically competent recordkeeping merely or else the deployment of recordkeeping skills for

an approved purpose? How is chaos and unreliability resulting from poor recordkeeping to be measured? What mechanism keeps archivists to account in preventing it? Supposing that is an archivist's role and function, where is the benchmark to measure their performance and the disciplinary system to enforce it? To paraphrase the issue as I raised it some time ago:<sup>5</sup>

Are we accountable to our Nazi employers for building a better recordkeeping system to count heads as they pass into the gas chamber? If we refuse, is that a professional act, or merely an act of individual conscience, or is it a duty we owe to society?

Archivists eagerly set standards for good recordkeeping that apply to others. By what measure can their value and utility be judged? Why should archivists' views on what makes good recordkeeping be esteemed? Who sets the standards binding them? What happens when an appraisal goes bad? Who corrects their professional failures? Is theirs a self-regulating profession? Are transgressions punished or corrected within their own ranks? If no-one regulates their professional behaviour what prevents misbehaviour from happening and then being repeated again, and again, and again? Has there been a clear articulation of the role which is expected of them:

- technical proficiency (as providers or enablers)
- policing (as monitors or enforcers)
- supporting (as ordainers or educators)
- auditing (as assessors of performance).

Is an archivist responsible only for his or her own actions or are we collectively responsible for each others' actions? Does being accountable mean we must set up systems that prevent (or at least detect and correct) lapses by professional colleagues? Whose job it is to punish and prevent deviation? How do we know if we have deviated (or if another archivist has deviated)? Whose job is it to punish and prevent professional lapses and are they doing it? If not, why are they not being shamed and blamed for it? If it is no-one's job, what should be done to change that?

Archivists are collectively outraged when, amidst revelations of public scandals, it transpires that recordkeeping was not done 'by the book'.

What is it that is upsetting to them? Is it because archivists have been sidelined and treated as if they are of no account, or are they upset because recordkeeping standards that may have upheld accountability in others were violated? How can anyone know that the standards would have been effective if only the archivist had been involved? How can anyone be sure that archivists have not been or will not be complicit in accountability lapses? If a recordkeeping failure occurs with the archivist's blessing, does it matter if the outcome is good or bad?

Is it clear:

- **who** we are accountable to  
(employers, society, third parties, or the profession)
- **what** we are accountable for  
(ordaining, providing, mentoring, monitoring, policing, etc.)<sup>6</sup>
- **how** our performance should be measured  
(conformance to process or quality of outcome)
- **by whom** (or how) performance can be monitored and corrected  
(courts, tribunals, ourselves, third parties, ICAC<sup>7</sup>)?

Confusion and uncertainty exist over the role of the archivist. There is ambiguity over which role or roles (if any) archivists are actually assigned. Comfortable and self-serving claims are made that archives programs support accountability, but all too often these claims disappear into a fog of ambiguity and obfuscation when concrete action is required to remedy specific lapses. Benchmarks to measure and evaluate performance as agents of accountability are lacking. There is also lack of correctives to remedy identified shortcomings in their performance.

Having effective standards or benchmarks to measure behaviour and to indicate what to do and what not to do in professional matters is not the same as a standard for good recordkeeping. Such benchmarks define archivists' accountabilities in implementing and upholding good recordkeeping standards – especially where those standards give archivists a discretion – ie where best practice involves submitting outcomes to the archivist's professional judgement. If the archivist's role is to make professional judgements but nothing limits, controls, or directs

what they decide, then they are carrying out what Barbara Reed has derisively called the 'god-archivist' role.<sup>8</sup> But archivists are not gods.

Individual behaviour emanates from a moral or professional sense which may be shared but which certainly cannot be monitored or benchmarked in human terms. A benchmark stipulates, in advance of action, professional behaviours which are collectively approved as good practice (whatever we may think as individuals) or behaviours which are collectively condemned and are therefore disallowed even if individually we do not agree with that. Without professional codes of ethics, standards of behaviour, and benchmarks of performance to guide and control them, archivists have only their individual morality to govern their response to difficult situations. Individuals may well choose to act out of conscience, but this must not be confused with acting accountably in a professional sense. The classic illustration of the difference is the position of the Catholic doctor on abortion, whose moral and ethical obligations are opposed to each other. The distinction is made in the accompanying table:<sup>9</sup>

<p><i>Uncodified Behaviour</i></p> <p><i>Conflicting or Disputed Expectations</i></p>	<p><i>Whistleblowing</i></p> <p>Interfering; Renegade; Troublesome; Loose Cannon; Busybody; Courageous; Heroic; Unpredictable</p>	<p><i>Acts of Judgement</i></p> <p>Personal; Idiosyncratic; Odd Man Out; Live &amp; Let Live; Doesn't Bother Me; Moral; Principled; Bigoted; Wowser</p>	<p><i>Uncertain or Disputed Role</i></p> <p><i>Not Assigned, Enforced, or Benchmarked</i></p>
<p><i>Codified Behaviour</i></p> <p><i>Agreed or Shared Expectations</i></p>	<p><i>Law Abiding Behaviour</i></p> <p>Enforcement; Compliance; Punishment; Good Citizen; Prohibition; Policing; Predictability; 'Certainty'</p>	<p><i>Accountable Behaviour</i></p> <p>Conformity; Reliability; Credibility; Ethical; Standards; Benchmarks; Auditing; Monitoring</p>	<p><i>Assigned or Agreed Role</i></p> <p><i>Understood, Enforced, and Benchmarked</i></p>
	<p><i>Societal Responsibilities</i></p> <p>Universal Application; Wide Impact (Applies to Everyone)</p>	<p><i>Individual (or group) Responsibilities</i></p> <p>Particular Application; Specific Focus (Applies to Some)</p>	

**Table 1. Accountable and related behaviours**

Law-abiding behaviour has a wide or universal application. The responsibility or obligation applies to everyone. The rule that every man is equal before the law means that everyone is subject to the same rules (not that everyone gets an even break). Even where only some are involved (in a contract of employment, for example) the principles apply to all. Employment contracts are interpreted and applied in accordance with statutory or common law rules of universal application. Whistleblowers are the most law-abiding people you can meet. They are do-gooders who point out when others are breaking the law or failing in a legal obligation. They are not arguing for their own moral preferences, they are pointing out that someone is breaching a code or law that applies to everyone. It is not a matter of expressing a personal preference but of highlighting a breach of rules that everyone (they believe) should be following – even when the rest of us are prepared to wink at the ‘minor’ infraction. That is what makes them a ‘pain’ and not simply a nuisance.

Once benchmarks are established two different kinds of accountability failures will arise:

1. breaches of those benchmarks
2. unforeseen issues needing new benchmarks to prevent a recurrence.

Benchmarks have to be renewed and updated to take account of unforeseen problems.

Following the ‘Children Overboard’ Scandal,<sup>10</sup> a lack of accountability surrounding the relationship between ministers, their advisers, and the bureaucracy and the armed forces was identified in a Senate Report as a problem. The Director-General of National Archives (NAA) was required to say what recordkeeping standards applied to ministerial advisers. Reference was made to some general and unspecific standards but there was no pursuit of a key question: what had NAA done about the perceived failure in recordkeeping and what could it do to prevent a recurrence of the failures identified in the review of these events? What would have happened if the Director-General of NAA had come away from the subsequent inquiry and issued a media release saying: ‘This case reveals serious flaws in our procedures which will be remedied immediately; I am issuing at once a new set of guidelines designed to ensure that dealings between ministers and elements of the public service and the armed forces

for which they are responsible are properly documented when carried on through the medium of advisers'.

Would the head of NAA have been dismissed for issuing such a statement or merely sidelined as a 'troublesome priest'? Could such an intervention have any useful consequence? Would it have been an exercise of personal judgement or a requirement of accountable professional behaviour? It could not have been the latter because there is no professional statement obliging archivists to act in response to exposures of recordkeeping failures by using their position to eliminate the possibility of a recurrence of such failures in the future. If there had been, a head of NAA acting in this way could have defended him/herself by pointing out that he/she had a professional obligation to take remedial action in these circumstances. Indeed, the failure to take such action might have placed the individual in violation of professional codes of conduct. Even a statutory obligation resting on the heads of such institutions begs the question: what is to be their role in upholding the standards they set?

Some wrongs in which professionals become involved cannot be dealt with other than by resolving the conflict between what they are being asked to do and standards of behaviour required of them by the profession to which they belong. Consider how medical professionals have spoken out over the 'Children in Custody' issue.<sup>11</sup> Sometimes this has been in violation of restrictions on them as employees, pursued regardless, and protected to some degree by the fact that they have professional obligations that go beyond the narrow legal obligations of employee to employer. Where is the statement of professional obligations for archivists that might afford them a similar measure of protection? Would such a statement carry with it an obligation to do the right thing even if they didn't want to?

### **Do archivists act well?**

In 1999, the Australian Society of Archivists (ASA), the professional body representing archivists in this country, issued a public statement on the 'Heiner Affair' publicly condemning the appraisal undertaken in 1990 by the Queensland State Archives (QSA).<sup>12</sup> It was stated that the Heiner appraisal by QSA violated the standards of good appraisal and that it was wrong to go about appraisals in an ad hoc way.<sup>13</sup> Many similar condemnations have been expressed about instances of failed

recordkeeping in which an archivist was not involved and governments (in particular) have been urged to observe the recordkeeping standards.

This appears, however, to be the only instance of a professional failure that has been condemned by the ASA. Can other examples be found which should, on this precedent, have been condemned and were not? How does the profession recognise such failures? What prompts a denunciation of them when they are discerned? What tests should be used to establish a professional failure so that condemnation is not (and is not seen to be) capricious? On what grounds was the Heiner appraisal condemned? Whose responsibility is it to initiate consideration of such cases and whose job is it to decide that a failure has occurred?

The Heiner Affair, in my judgement, is important because it is the only recordkeeping failure that the ASA has condemned in which the actions of the archivist are criticised. Unlike other instances in which ASA has publicly commented on such failures, in Heiner the propriety of the archivist's actions is questioned by our own professional association.

Whistleblower Kevin Lindeberg and lawyers acting on his behalf have argued before Parliamentary Inquiries that the actions of the Queensland Cabinet in ordering the destruction of the Heiner records to prevent their being obtained in prospective legal proceedings amounted to obstruction of justice. In dealing with it before a Senate Committee, the Queensland Criminal Justice Commission (CJC) advanced, in defence of the Government's action, an argument that the Queensland State Archivist's role was peripheral – to consider only historical value – and it was for that reason that she did not need to be told that the records whose destruction she was being asked to allow were wanted in support of legal action. This defence of the Queensland Government's actions brought into contention the nature of archivists' accountabilities and made assertions about their role that the ASA has hotly denied.

The Heiner Case has since been linked to allegations about systemic child and juvenile inmate abuse in Queensland (specifically, cover-up of inmate abuse in Queensland child detention centres). The Forde Inquiry<sup>14</sup> found that there had been systemic abuse inside the State's institutions, a system involving staff, unions, and the bureaucracy. While no inference can be drawn, it is legitimate for those interested in the Heiner Case to ask this question: was the Queensland Government's destruction of the



Heiner records part of that systemic cover-up of abuse and, if so, can we be sure that the archivist was not part of that cover-up?

If there was a cover-up, did it also involve successive Queensland Governments which, knowing of the abuse, did nothing to correct it? Was there a culture of deceit in which the destruction of records was part? In the light of such questions, the definition of an archivist's accountabilities, when involved in such matters, must be of central concern to archivists. The discharge of the archivist's responsibilities (whatever they are) in a fair, consistent, and impartial manner – irrespective of whether or not s/he is entangled in a cover-up – is the only benchmark by which they can justify their professional engagement.

The lesson archivists claim to learn and teach to the world arising from recordkeeping lapses of all kinds is that they occur because good recordkeeping practices are not in place or, if in place, that they are subverted or bypassed. This is the smug, self-serving, comfortable little sermon archivists preach to others. In the Heiner Case, a recordkeeping regime was in place and it was invoked – yet still the mischief occurred. If the appraisal was bad, as ASA concluded it was, the case screams out into the faces of the smug, the self-serving, and the comfortable amongst them. 'Even when recordkeeping is taken care of it still doesn't matter. The mischief still occurs. The system fails. Explain that'.

Without proper definition of role and function and absent adequate benchmarks and correction, archivists have nothing to guide them in considering alleged faulty practice besides individual opinion. Unless they (like other professions) identify lapses in professional behaviour when such lapses occur and accept collective responsibility for them, unless steps are taken to correct them and prevent them from recurring, everything else archivists say about accountability is hollow, and mean, and false. To learn lessons from their mistakes, archivists have first to admit the mischief when it occurs and rectify it.

Was ASA's condemnation of the QSA appraisal an instance of a robust program of professional self-regulation? Did it inaugurate a regime of standards-based oversight by the profession of appraisal activity? Has no ad hoc appraisal been done since then? In fact I am in a position to tell you it has. I did some when I was Acting Chief Archivist of New Zealand.

I cannot be the only one who has violated that principle in the period since it was enunciated by ASA in 1999. In my own defence (and in defence of Archives New Zealand) I can say that in over thirty years of professional activity – including nearly ten years as the final arbiter of disposal in the State of Victoria – I have never seen such detailed and considered appraisal reports as I did during my time in New Zealand.

Would today's ASA Council agree that despite the ASA's 1999 condemnation of ad hoc appraisal (reaffirmed in 2001) it is still going on? Why has the Council not issued subsequent condemnations of these practices – at least in general terms, if not a case by case basis? Is it the ASA's position that the alleged professional failure in Heiner is the only such lapse to have occurred or the only one serious enough to warrant professional condemnation? Has Council taken any steps to discover the facts, to identify other cases of professional lapses? If the evils of ad hoc appraisal persist – if it is widespread – what is ASA doing about it? Is the draft appraisal policy currently under consideration intended to affirm the condemnation of ad hoc appraisal or revoke a principle that some wish had never been promulgated?

How can we feel secure about placing recordkeeping responsibilities in the hands of archivists if their transgressions are not uncovered and corrected? How can we know whether or not they transgress if there is no process for evaluating their performance? How can anyone evaluate their performance if there are few or no standards or benchmarks from which to measure? How could such benchmarks (if they existed) be applied if the role and function of archivists is unclear (if the responsibility for conforming their behaviour to professional benchmarks is not established)?

Our archives laws confer a 'god-archivist' role. They mandate that key recordkeeping decisions must be made by the archivist. Recordkeeping accountability is achieved when non-archivists submit their proposals to the judgement of a trusted professional. It must be assumed that the archivist is benign, competent, and incorruptible because there are no professional standards by which their discretionary actions can be measured, controlled, limited, or condemned – apart from the much more limited standards of administrative law. Archivists have the power to control the actions of others through the exercise of discretions conferred upon them, but can they be trusted? Who or what has the power to control their actions and judgements? What appeals are there against them?

What punishments and corrections are inflicted on them when they err? What are the checks and balances that ensure a predictable outcome? How can their actions be measured and judged and what tests can be used to measure, evaluate, and (if necessary) condemn their performance? To quote from a critic of Plato's ideal republic: who guards the guardians?<sup>15</sup>

To put the matter in its bluntest form: what is the use of a professional standard or code of ethics which is so elastic that it cannot possibly ever bring the professional employee into conflict with his or her employer or under censure from whoever it is who might act as the watchdog over our professional integrity? In this regard, the violation of a procedure or technique is only one aspect of the matter (and that the least). Of far more weight are questions of outcome and purpose – directed to the issue of what archivists are responsible for (and to whom).

### **Did the profession act well in the Heiner Case?**

This is what a disillusioned and disgusted *Dreyfusard* said about opportunists who joined the cause when the tide began to turn in favour of Dreyfus:

Everything, everything begins with a *mystique* and ends in politics. Founders come first, but the profiteers come after them.<sup>16</sup>

The ASA's 1999 Statement condemning the Heiner appraisal followed protracted and furious debates on the Australian listserv while the ASA floundered from one position to another.<sup>17</sup> Leaving aside the question of whether ASA acted well during the long years of indecision until the ASA Council (after one false start) made an adverse ruling on the Heiner appraisal, the following section of this article looks at how the ASA has portrayed the professional response to Heiner when making representations about the profession to others.

Condemnation shouldn't be ad hoc, any more than appraisal itself. In 1999, the profession demonstrated that it was willing, in one instance at least, to identify and condemn a practice they decided was wrong and that it had the capacity to do so. Because there were not (and arguably still are not) any clearly articulated standards of a good appraisal, Council of the day apparently saw the need (if they were going to condemn the

appraisal) to have some empirical standards by which to make the judgement – this time and the next time a decision by an archivist was called into question. In condemning ad hoc appraisal, it had begun establishing the benchmarks by which such judgements can be made. However, in the five years since it condemned ad hoc appraisal in 1999, I am unaware that ASA Council has commented on any other appraisal by an archivist for failing to abide by this benchmark it set for us all or that it has set any new benchmarks.

While this paper was being written, the ASA made a submission to the Senate Select Committee on the Lindeberg Grievance. In it, the ASA refers to the Heiner Affair as a 'notable example of failed recordkeeping'. This is not a tentative, uncertain, focused, or limited condemnation of aspects of the Affair, similar to earlier statements from the ASA Council. This is an aggressive attack on what is claimed to be the violation of professional standards that Heiner, as it is now viewed by the ASA, represents. But there were not, at the time of the Heiner appraisal, or at the time of the ASA's 1999 condemnation of it, any articulated standards of professional behaviour to be violated, such that the ASA's conclusion in retrospect, that the Affair represents a notable recordkeeping failure, could be justified. There are no such standards now. In the absence of such standards, the triumphalist tone in this Submission from ASA to the Senate can hardly be justified. The Submission repeats key points made in public statements issued by earlier ASA Councils in 1999 and 2001 – that the Queensland CJC misrepresented the role of the State Archivist before a Parliamentary Committee, saying that her role was to be concerned only with historical values when conducting an appraisal, that the QSA appraisal in Heiner was professionally unsound, and that it and all other ad hoc appraisals were professionally unacceptable.

As an account of the profession's evolving attitude to ad hoc appraisal generally and to the Heiner appraisal in particular this is deeply misleading and amounts to a rewriting of the history of the Affair that can only be described as profiteering. The Submission says that archivists act consistently 'with international best practice' and concludes that the Heiner appraisal should have been 'less hurried and more considered'. It states that 'sound appraisal regimes, consisting of records disposal authorities, appraisal criteria, and disposal rules and policies should be put into place'.

Slowing the process down or having disposal schedules is not what is needed to avoid ad hoc appraisal. To suggest this to a group of amateurs sitting on a Senate Committee is to confuse and obfuscate, not to enlighten. Anyone anxious to enlighten the laity on this issue would need to be much simpler and to the point. Appraisal criteria, rules, and policies have appeared since the Heiner appraisal, but ASA Council still does not seem to have learned (or is still unwilling to acknowledge) the fundamental lesson. Being consistent with 'international best practice' means nothing unless international best practice itself establishes the basis upon which to condemn and disavow (or else approve and justify) what the QSA archivists did in 1990. Saying you conform to best practice is no defence if what you are doing stinks. If what you are doing is satisfactory, it doesn't matter whether it conforms to best practice or not.

Good appraisal practice (as distinct from 'international best practice') means consistently applying your own policies and procedures – and if this is not international best practice then international best practice stinks. Nowhere in the ASA's Submission can be found the one, clear, unambiguous statement that would show that Council, speaking on behalf of archivists, has yet grasped the essential point about what is wrong with ad hoc appraisal – the one clear lesson they can unambiguously claim to have learned from the Heiner Affair. They must be able to guarantee that all records will be appraised in the same way and in accordance with the same rules – consistently, reliably, routinely and predictably. No amount of best practice, policies, procedures, rules, statements, assertions, or submissions can substitute for a simple assurance that this is how they do now behave, in the light of the Heiner experience, and will continue to behave because it has been incorporated into their professional practice. The submission needed to say that archivists can be relied on to treat every appraisal the same way using the same methods and according to the same benchmarks.

The Submission gives reassurances about the reliability of archivists as guardians of accountability, referring the Senate Committee to 'criteria' for appraisal contained in AS 4390<sup>18</sup> and in statements issued by the State Records Office of New South Wales (SRONSW) and National Archives (NAA). Reading this Submission, the uninformed could be forgiven for concluding that the Heiner Affair is a triumph for a profession which detected and denounced errors in the Queensland State Archivist's appraisal when she acted in violation of abiding professional standards

– fearlessly enunciated by Australia’s two leading government archives authorities. This is self-serving tosh. In 1990, the Queensland State Archivist had to conduct her appraisal in the absence of such standards. That is a professional failure, not one by an individual, but this is not what the ASA is now saying.

Consider what it does not say. It makes no reference to:

- the prolonged inaction of ASA in the Heiner matter
- the false start<sup>19</sup> blaming officials and clearing the State Archivist
- the reluctance to accept collective responsibility
- dissensions with government archivists over ad hoc appraisal.<sup>20</sup>

Instead it tries to make out that archivists always:

- understood that the Heiner appraisal was flawed
- condemned it without hesitation
- had robust standards to stop ad hoc appraisal occurring
- were being led in this by SRONSW and NAA.

As a distortion of history, this is self-serving and nothing short of profiteering. It is resonant of the old story we have become familiar with in the aftermath of other accountability failures – the one told by vested interests everywhere. There was no systemic failure, just an individual lapse. That has been put right, so there is nothing more to be concerned about. ‘Don’t you worry about that. The system is fundamentally sound’.

These assertions by ASA about standards and appraisal criteria are threadbare. They afford no such satisfaction of the kind asserted by the ASA in its Submission. The standards and criteria referred to are simply not benchmarks against which archivists’ accountability can be measured. It is good that some appraisal criteria now exist (irrespective of their merit). The progress made in establishing recordkeeping standards post-Heiner is to be welcomed. Criteria are about having grounds for appraisal decisions. Benchmarks are about monitoring, measuring, and if necessary condemning the application of those criteria. The standards contain no such benchmarks and can point to none because none exist.

Having 'criteria' exposes the profession to nothing more threatening than a debate about matters of judgement. Having performance benchmarks is about removing individual discretion and replacing it with measurable and enforceable standards of behaviour. For years, a mature professional approach to the problems raised by the Heiner appraisal has been thwarted by opposition to (or denial of the need for) the introduction of performance benchmarks designed to prevent the kind of flaws identified by the 1999 ASA Statement. Now, without recantation or acknowledgement of any kind of failure on the profession's part, a claim is advanced by the ASA's governing council that transforms its own history by making out that there never was a problem and that appraisal criteria can be substituted for performance benchmarks. This is odious.

The ASA Council even found a word to describe what happened. All those years of silence and inaction, followed by more years of denial, disputes, ill-feeling, and disagreement. The false start with the attempt to blame the Queensland Government for misleading a colleague. The disgrace of seeing her fellow government archivists congratulating her. The disputation over whether or not her appraisal was flawed and the unreputed refusal by the government archivists to accept the ASA's stand on ad hoc appraisal. The failure to come up with a draft appraisal policy worthy of the name. All this, you will be surprised to hear, was 'monitoring' the situation. Some people have no shame.

By ignoring some parts of its own recent past, the ASA Council gives a context that is false and misleading in its version of the professional response to Heiner. Why does this matter? Apart from the injustice it does to the Queensland State Archivist at the time, it suggests to the unwary reader that archivists were prepared for Heiner and that no subsequent remedial action was required (and is still not required). It transforms a tale of blundering professional immaturity into one of individual transgression. It uses the subsequent development of standards and criteria (much of which would probably have happened anyway) to insinuate that archivists know – and always have known – how to deal with such affairs. The truth is that archivists were not prepared for Heiner and are not prepared for a similar episode. The profiteers would have you and, what is worse, others think otherwise.

## What having benchmarks for professional behaviour really means

The ASA's Submission suggests that archivists had it right all along. It was always known that the Queensland appraisal was wrong. There was no dissension and debate in the five or six years leading up to the 1999 ASA Statement. How could there be? Archivists had State Records and the National Archives to provide them with guidance. There was no false start shifting responsibility from the Queensland State Archivist to the Queensland Government. Criteria existed to prevent this kind of thing from happening. Where does all this leave the incumbent state archivist? In logic, if her appraisal was 'flawed', as the ASA has been saying it was since 1999, the fault must be hers individually. If archivists had criteria and the National and New South Wales government archives authorities had enunciated them, why didn't the Queensland State Archivist use them? The inference would seem to be that she let the profession down. There are no congratulations for her now. She seems to be the fall guy.

While continuing to condemn her actions, the ASA also continues to deny that this was simply a professional lapse and puts some of the blame back onto the Queensland Government by accusing it of 'misleading' the Archivist (over the likelihood of legal proceedings). But how could this clear her from the implication that she is personally responsible for the flaws in her appraisal if that appraisal was undertaken in violation of clearly articulated benchmarks designed to ensure that such errors do not occur? If the appraisal took place according to worthwhile benchmarks, it should have been proof against a dishonest government. The whole point of outlawing ad hoc appraisal is to guard against the archivist being misled or having incomplete information.

It is irresponsible to place the blame on the State Archivist individually – as irresponsible as it was for her government-archivist colleagues to exonerate her individually. The significance of the Heiner appraisal is not that it marks an individual failure as claimed by ASA or an individual triumph as claimed by the government archivists. The significance is that it marks a systemic failure by archivists because in 1990 the profession had not yet established the benchmarks for behaviour which would have guided her or anyone else in her position into a correct course of action. And the profession still has not done so. Profiteering must not get in the way of recognising that fact and disguising it behind criteria and standards which post-date the events and are not adequate for the purpose. Council is still avoiding the central issue. Their Submission



leads the unwary and the uninformed to a false conclusion that this was an individual lapse from collective standards. In truth, this was a collective failure to provide benchmarks needed to prevent things of which archivists subsequently came to disapprove from happening or, if they happened, were needed to provide the basis for a condemnation of them.

Even if robust appraisal criteria had been in place then (and they were not) and the recordkeeping standard – *AS ISO 15489* – had been set (and it had not), the clarity of role and the necessary benchmarks of performance are still lacking today which would give substance to the kind of assurances the ASA Council gave to the Australian Senate.<sup>21</sup> This what the Submission might have said:

- we now think the Heiner appraisal was flawed
- there were no standards or benchmarks at the time
- we didn't understand the issues at first
- we resisted the hard lessons for us as a profession
- that has now changed
- we have started to make amends and establish benchmarks
- we want to stop something like this happening again
- we still have a long way to go
- we are sorry.

It is deeply ironic that the profession seems to have moved from trying to protect the good name of the Queensland State Archivist from the odium that an admission of professional failure entails to letting her personally bear the blame for what was rightly a collective failure. It cannot be said that her actions were 'flawed' because she violated the robust standards and criteria which guide archivists' actions professionally or that she would not have erred if she had heeded them. It cannot be said that she was therefore individually to blame. The lesson is that the profession was (and still is) collectively at fault. The lesson is that when she made her appraisal archivists were professionally immature and that hers was an action any one of them could have taken because the more sophisticated professional understanding of the 'flaws' in ad hoc appraisal – which they have subsequently developed, in part, as a result

of what they finally came to learn about themselves from Heiner – were not then appreciated.

### **How secure is the standard against ad hoc appraisal?**

On 13 December, 2001, the ASA President refused my request that ASA make a statement to mark the wind-up of the Queensland Criminal Justice Commission by repeating the earlier Council's condemnation of their misrepresentation of the archivist's mission. In a listserv post refusing my request the President stated that the ASA Council 'reaffirms' the 1999 statement on Heiner. He went on to say that ASA would make no further comment about any issue arising out of the Heiner Affair unless a Royal Commission was established, in effect, that the statements already issued were ASA's last word. They had condemned the actions of the Queensland Government in their dealings with the Archivist, they had condemned Queensland State Archives for its handling of the Heiner appraisal, they had condemned ad hoc appraisal in principle.

Within three months of that declaration, Council initiated (February 2002) a process leading to a draft appraisal policy (eventually issued as a draft in April 2003).<sup>22</sup> At the Society's Annual General Meeting (2003), in response to a question from me, it was confirmed that this Policy would, if promulgated, extinguish the 1999 statement of principle against ad hoc appraisal – a condemnation that had been 'reaffirmed' as part of the ASA's abiding position and last word on Heiner barely three months before this process of review was initiated. It is germane to ask, therefore: with what statement of principle will the proposed policy replace the one we already have and how secure will any such policy be as an abiding basis for correct professional action?

The draft appraisal policy that was subsequently circulated, as I pointed out in a posting in 2003 to the listserv, has no statements of principle by which the next flawed appraisal by an archivist could be judged and its promulgation (as we now know) would extinguish from the record the one such statement ASA has ever made. To embark on that course of action, by means of that draft, in the same three-month period in which a pronouncement is made that the earlier statement of principle is your last word on the matter is not the action of a profession that understands accountability. The record affirms one instance (Heiner) in which the ASA has said an appraisal was 'flawed' and set out, in the 1999 ASA

Statement on Heiner, a standard for right behaviour. Where is the evidence that, as a profession, we are concerned about professional failures on a continuing basis, condemning them, and taking steps to eliminate them? What is being done to establish a bedrock set of benchmarks, immune from frequent revision, upon which to act?

It may not be the role of the ASA to root out lapses in professional behaviour and to approve or disapprove the conduct of archivists and archives institutions. The government archivists have refused to accept the profession's reasons given as the basis for the only disavowal of malpractice ever made by the ASA when it tried to do so.<sup>23</sup> Perhaps the ASA should avoid making judgements in particular cases and concentrate instead on establishing professionally endorsed benchmarks, urging practitioners to establish or subscribe to a benchmarking regime by which misbehaviour by their own archivists can be judged (eg by other agents of accountability such as auditors and ombudsmen). Perhaps the profession should simply establish the standards of professional behaviour and leave it to others (in a position to monitor and compel archivists to behave) to establish benchmarks based on those standards? If we are limited to the above could we then credibly be regarded as a profession? It should be remembered that it was the establishment of a benchmark by which everyone's behaviour could be measured, not the criticism of their colleague's work, to which the Council of Federal and State Archivists (COFSTA) objected.

If the role of the ASA is to establish standards but not to be involved in their application, if archivists have no involvement in having them adopted (or legislated) as performance benchmarks for the archivists in employment, if employers of archivists have the 'right' to reject professional standards if they wish and no-one has the role of enforcing them, then there is no practical application for them. Should we be lobbying to have some statutory basis given to professional standards? Is it the role of our professional body to enforce professional standards (regardless of the performance standards required by their employers or by law) as well as to enunciate them? Archivists must decide what they think it means to be a profession.

How well archivists attend to all this is some part of judging whether they, as a professional body, with aspirations to be more than a special interest group, understand accountability and act accountably. It is not easy. We can give them a break. If they do not get it right the first time, it

is OK to go back and do it again. What cannot be forgiven is an unwillingness to make the effort and obfuscate the fact of their shortcomings from others (and possibly themselves). Not knowing that a standard must support principled appraisal, or worse not wanting one which does so – that is what cannot be forgiven.

### **Did government archivists and the ICA act well?**

The record of the Council of Federal, State, and Territory Archivists (COFSTA) – now Council of Australasian Archives and Records Authorities (CAARA) – in Heiner amounts to this,<sup>24</sup> they publicly:

- ‘supported’ their colleague’s actions in Heiner
- and her escape from censure on legal grounds
- opposed the profession’s censure of her appraisal methods
- repudiated the statement of principles by which ad hoc appraisal was condemned by the profession.

In due course, the Heiner Affair reached the agenda of an ICA Committee dealing, *inter alia*, with recordkeeping practice. When this happened, the ICA Secretariat intervened to have it removed from the agenda and instructed that it was a matter for Australia and should not be considered by ICA. The ICA decided that the profession was responsible nationally – not internationally. But what is to be done if the national archival establishment cannot be trusted to act accountably? What assurance can there be that they will?

CAARA and the ICA represent (exclusively in the one case and predominantly in the other) government archives programs – *ie* institutions. If government archives are plausibly to be represented as agents of accountability, it is not enough that they apply recordkeeping standards to the activities of others. Their own activities must be controlled by external review based on monitoring of their behaviour against predetermined standards and benchmarks, in the promulgation of which they themselves have no part. We see how they behaved in the Heiner case. What can be done to establish professional standards of behaviour embodying or providing the source of benchmarks for the government archives programs by which their shortcomings can be measured irrespective of what they (individually or collectively) think of them?

Can professional standards bind an enterprise and prohibit their misuse of professionals in a way that violates the standards or benchmarks of that profession? This is precisely the same issue facing legislators and the accounting profession post-Enron<sup>25</sup> which led to alterations in professional accounting standards. It was the same issue facing legislators and the legal profession when reviewing the advice solicitors gave British American Tobacco regarding document destruction in the McCabe Case leading to changes in Victoria to the rules governing the professional behaviour of solicitors and the statutory prohibition on destruction of evidence.<sup>26</sup> Can a situation arise in which the professional obligations of an archivist or recordkeeper take precedence over their duties to an employer or client?

All we have at the moment, in a very preliminary way, is the commencement (hardly more than that) by the ASA of an articulation of appraisal standards – namely, a condemnation of ad hoc appraisal. Even that is under threat from the draft appraisal ‘policy’ ASA has sponsored which would simultaneously invalidate that standard and replace it with an unprincipled, process-focused statement.<sup>27</sup> The only benchmarks which could be based on that ‘policy’ would be ones which measured whether archivists followed the approved steps, regardless of the appraisal outcome of their work. These are hardly benchmarks worth having. It was the gassing at Auschwitz, not the process by which people were brought to it, that mattered most.

Is this an area in which the past cosy relationship between ASA and COFSTA (with the ASA President attending COFSTA meetings) was hostile to a satisfactory outcome? If so, the absence of any apparent formal connection between ASA and the new CAARA is to be welcomed. Some have argued that the category of institutional member within ASA is inimical to the profession’s integrity. I disagree. As members, employing institutions have the clear obligations of membership and these include having regard to any benchmarks of professional behaviour set by the ASA. No such constitutional clarity existed around the ASA’s informal association during the 1990s with the largest employers in the industry when issues arose in which COFSTA had interests – interests both as employers of archivists and as the representatives of governments whose actions archivists were statutorily empowered to control. Those other government interests are potentially, if not actually, unfriendly to the development of new standards of accountability for archivists. In view

of COFSTA's record on Heiner, how could they have credibly been part of a process for establishing professional standards of appraisal? Even now it is possible to ask: how can the government archivists be our trusted partners in the development of professional benchmarks on recordkeeping? And even if they could, why should they be included when other employers of archivists (outside of government) are not?

In their response to the profession's position on Heiner, government archivists claimed to have superior knowledge and judgement. Such a claim cannot be entertained. We can, however, acknowledge their right, as institutional members of the professional body to have their views heard and considered.

In 2003, Terry Cook posted to the ARCAN-L list the ACA Submission on the merger of the National Archives and Library in Canada. The Submission was in favour of the merger. I responded saying that I could see little merit in the merger. There was no public response to my comments, but I received a small flood of private emails from Canadian colleagues thanking me – saying that few Canadians dared speak out publicly against it. The 'heavies' of the profession (many of them employers) were for it and there was a climate of fear that prevented the expression of contrary opinion. Some people said that their archival employers in Canada virtually forbade their staff from participating in public discussion of professional issues – even when it involved no direct criticism or even direct comment on the affairs of their employer.

One of the adverse results of collaborative action amongst the government archivists is that it can plausibly be argued that any comment on areas dealt with by CAARA now comes within the prohibition on employees commenting adversely (or even commenting at all) on the affairs of their employer. I have been told that a similar climate of fear now exists in some archives institutions in Australia and that some archivists with opinions they know to be unwelcome to their employers dare not express them. I have been told privately of examples (one example, at least, that I know of) where professional staff are being prevented from participating in professional dialogue deemed unworthy, unwholesome, subversive, dangerous, or just unwelcome by their employer. If even some of this is true, it represents, apart from its inherent disgracefulness, the most serious single challenge the profession faces in developing a mature approach to its own accountability. Employers inhibiting or impeding full

participation by their staff in the professional discourse is itself an assault on professional accountability.

I would urge the ASA to attempt to reach an agreement with CAARA and other employers on this issue. ASA should seek guarantees enabling the freest possible expression of professional opinion by employees of institutional members. ASA should take the view that actions by employers outside those guidelines constitute an act of professional misconduct on the part of the employers.<sup>28</sup> Many employing institutions are members of the Society and they are obliged to have regard to the requirements of professional behaviour articulated by the ASA just like any other members. If CAARA and other employers will not cooperate, I would urge the ASA to issue such guidelines unilaterally.

### **Making the profession behave**

An enterprise which encompasses accountable and ethical behaviour is a learning enterprise. Accountability is a sanctioned mechanism for ensuring one learns from mistakes. If such a mechanism does not exist, if learning from mistakes is not sanctioned, then individuals are compelled to respond to wrong-doing, flaws, and systemic failures by acts of conscience and by whistleblowing. In such a scenario, enterprises respond by denial and counter-attack instead of learning and improving. Accountable professionals have :

- properly defined roles and functions
- clear assignment of those roles and functions
- standards and benchmarks to go by
- checks to ensure behaviour conforms to code.

Well-enforced whistleblower laws are desirable to protect the last line of defence against recordkeeping lapses, but I would argue that whistleblowing (or any act of exceptional courage) is not enough. What we need are systems that make exceptional acts of courage unnecessary and I would add the caution that too much emphasis on it can distract the eye from the main game: systemic solutions which provide safeguards against recordkeeping failures.

The lack of clarity around the definition and assignment of recordkeeping roles and functions in relation to accountability makes it all too easy for

recordkeepers to become confused (or, worse, to use the confusion to slip out of responsibility). To avoid this, accountability must be assigned. I will not say much more about roles and functions here because it is dealt with in my chapter in a recent book.<sup>29</sup> Look there and you will find a table of the (sometimes conflicting) roles and functions which I am developing.

In response to the lack of benchmarks and check mechanisms that makes it impossible to judge recordkeepers in the performance of their assigned role and function (if any), some people point to the professional codes of ethics. I invite you to examine those that are up on the websites of the professional bodies (ICA, ASA and RMAA). They fail for want of certainty. An ethical code must be sufficiently detailed, specific, and unambiguous so that – in a particular instance – it is capable of determining that an outcome which ought to have occurred is different from one that has occurred. Otherwise it is just good advice. Precision is all the more desirable if you accept the proposition I have already made that a distinction has to be drawn between professionally ethical behaviour and moral issues (on the one hand) and employment obligations (on the other). Ethical behaviour is agreement on a predictable professional response to ambiguous and difficult circumstances, not an individual instinct to do good. The litmus test for this proposition, well known in any discourse on professional ethics, is the one referred to earlier – the potential for conflict between ethical behaviour and private conscience in the case of a Catholic doctor dealing with abortion.

At the end of the day, absent the ASA's condemnation of ad hoc appraisal, no-one can say whether in 1990 the Queensland State Archivist did a bad appraisal. Where else, but in the ASA's repudiation of ad hoc appraisal, does it say that? What standards are written down that can be appealed to and say 'Look, there it is, in black and white: it says you shouldn't do an ad hoc appraisal in 24 hours'. It mattered not what the ASA thought or that COFSTA disagreed with them until the ASA itself laid it down as a principle in 1999 that this was the professional benchmark.

The problem with the 1999 statement condemning ad hoc appraisal – which may still be expunged if we let the ASA Council promulgate their draft Appraisal Policy as first circulated – is that it was formulated in relation to the Society's condemnation of a particular action. The ASA answered the wrong question – viz. did the Queensland State Archivist do right? The question they should have dealt with was – what standards



or benchmarks exist to let us answer that question? We need a suite of such principles articulated in advance so that future actions can be measured by reference to them. They must be drafted in precise and unambiguous terms to limit dispute over their applicability in particular circumstances. The course of action required should be clear and unambiguous (as far as possible – there will always be litigation). The standard we have condemning ad hoc appraisal – fairly unambiguously I am glad to say – is still under threat from the ASA draft Appraisal Policy. We don't need fewer such principles, we need more of them.

Next, in my view, is to set about clearly articulating recordkeeping roles and responsibilities. Archivists need to lobby to make sure these are clearly understood and clearly assigned. How often do we wring our hands and bewail the fact that our role (and, we believe, its importance) is not widely understood? How often do we reflect that this may be because we ourselves are confused and disunited about it? Is it the case that we cannot enlighten others about our role (and its importance) because we cannot give an intellectually coherent account of what we do – much less evidence of the fact that we do it?

The archival profession should lobby to make sure roles and responsibilities are clearly assigned. This is not just about compelling archivists to act accountably. It also about protecting them from improper blame if they are held accountable for evils in which their role and responsibility was neither clearly articulated nor clearly assigned. We need to decide what constitutes good practice, whether it be in a support role, a policing role, or whatever other articulated role has been assigned. Archivists must enforce standards or benchmarks based on those standards and an adequate system for checking that those standards are being met.

Nay-sayers will grumble 'it isn't practical' as all this passes along the wind tunnel between their ears triggering an automatic response button.<sup>30</sup> But this debate should not, initially, be about whether any of this will actually be implemented. It is about creating a grammar – a vocabulary, if you like – in which the issue of 'agents of accountability' can be intelligently discussed. It involves thinking about what it would mean if we were to make this claim of ourselves as archivists – as some already do of themselves or on behalf of others. What would be involved if we were actually invited to undertake that role – instead of simply

appropriating it unilaterally? If a consideration of these matters leads to certain conclusions about what is requisite to credibly make the claim that we carry out a role as agents of accountability (or credibly to have it conferred upon us), then we will know how to discuss such claims (or such offers) should they arise. However unlikely some of this may be implemented, that doesn't excuse confusion of thought or wishful thinking.

There is an element of self-blame in most of what I have said. In a paradoxical way, this is (if anything) an exoneration – humiliating, but an exoneration all the same. Archivists? Tut, tut. No use asking them, poor dears. They don't know what accountability means. If archivists don't understand accountability (and there are good grounds for saying they don't), they won't ever be able to act accountably. They are certainly unfit to be agents of accountability.

In a confused and unsatisfactory way, archivists are already (whether they like it or not) carrying out the role of agents of accountability. In a stumbling and incoherent kind of way, the 1999 ASA Council reached a view on how to resolve archivists' dilemmas in Heiner. But things can't rest there. The *profiteers* are forever busy. They cannot now be allowed to rewrite our history. Archivists can't credibly act as agents of accountability unless we really make amends. This is no longer just about whether or not Heiner represents a 'notable example of failed recordkeeping' as the ASA put it in its latest Submission to the Senate. It goes way beyond that. A more sophisticated understanding of the implications of being accountability agents is needed to prick the bubble of self-satisfaction puffed up by those who claim without justification to be fulfilling that role already. We still have some way to go, but my view is we shouldn't give up trying.

I have ranged within the boundaries of this topic (personal responsibility versus professional standards versus ethics) and around roles based on employment, social responsibility, and regulation of accountability. This is appropriate while the terms of the debate are so unsettled and confused.

## Endnotes

1 The sources upon which this analysis of the 'Heiner Affair' is based include:

- A Report to the Queensland Premier and Cabinet by Messrs JH Morris QC and Edward JC. Howard, 1995.
- A Motion of the Council of Federal, State and Territory Archives (COFSTA) in December 1996, reprinted in the *ASA Bulletin*.
- My critique of the COFSTA motion in an email to the aus-archivists listserv of 21 April 1997.
- A Public Statement by the ASA published on pp.140-142 of the *ASA Bulletin* for August 1997.
- A Position Statement published by ASA on pp.43-51 of the *ASA Bulletin* for March 1999.
- A letter from COFSTA to the ASA President of 18 March 1999 published in the same issue of the *ASA Bulletin*.
- The draft ASA Policy Statement on Appraisal published on pp.28-35 of the *ASA Bulletin* for April 2003.
- A Submission by the ASA to the Senate Select Committee on the Lindeberg Grievance under cover of a letter dated 28 May 2005.

2 There are many accounts of the link between recordkeeping and accountability but few examinations of the accountability of recordkeepers and the issues that come into play. For one such see Verne Harris, 'Archives, Politics, and Justice' Chapter 11 of *Political Pressure and the Archival Record* edited by Margaret Procter, Michael Cook, and Caroline Williams Chicago, American Society of Archivists, 2005, pp. 173-82,

3 In Australia, the familiar methods used include employment contracts, agreement between employers and employees on Key-Result-Areas (KRAs) and Key-Performance-Indicators (KPIs). Other measures include measuring methods and customer-feedback.

4 Transparency International, *Global Corruption Report 2003*, p. 19

5 Chris Hurley, 'The evolving role of government archives in democratic societies' Plenary Address delivered to the *Association of Canadian Archivists Annual Conference*, Winnipeg, 9 June 2001, pp. 1-2. Available online at the website for the Records Continuum Research Group at <<http://www.sims.monash.edu.au/research/rcrg/publications/index.html>>.

6 Chris Hurley 'Recordkeeping and Accountability' Chapter 9 of *Archives: Recordkeeping and Society* edited by Sue McKemmish, Michael Piggott, Barbara Reed, and Frank Upward, Wagga Wagga, Charles Sturt University, Centre for Information Studies, 2005, esp. pp. 237-241. This gives an analysis of possible roles and functions.

7 ICAC stands for Independent Commission Against corruption a well-known anti-corruption body in New South Wales.

8 Barbara Reed, 'Appraisal: An overview of theory and practice' *Past Caring – Australian Society of Archivists Annual Conference*, Sydney, 2002.

9 This diagram was originally developed for my presentation to the New South Wales Branch of the Records Management Association of Australasia (RMAA) entitled 'Ethical Dilemmas in Records Management' (6 April, 2004) which may now be consulted online at the website for the Records Continuum Research Group at <<http://www.sims.monash.edu.au/research/rcrg/publications/index.html>>.

10 For a summary of the Children Overboard matter see Sue McKemmish, 'Traces: Document, record, archive, archives' Chapter 1 of *Archives: Recordkeeping in Society* edited by Sue McKemmish, Michael Piggott, Barbara Reed and Frank Upward, Wagga Wagga, Charles Sturt University, Centre for Information Studies, 2005, pp. 4-10.

11 'Children in Custody' refers to an ongoing political and social issue in Australia of which 'Children Overboard' (above) may be seen as one episode. For over a decade, the Australian Government has pursued an electorally popular policy of preventing unauthorised immigration into Australia and turning back illegal immigrants at sea before reaching Australia's land border. This has involved forcing ships to turn away (one of which sank with considerable loss of life), setting up detention centres in Australia and off-shore while people are examined to determine refugee status. Periods of incarceration in these centres lasting several years are not uncommon and concerns have been expressed about the psychological effect of this policy on children being detained in the processing centres. Psychologists and medical personnel have been outspoken in their opposition to some of the excesses of this policy especially in regard to child detainees.

12 Rick Barry, 'Ethics issues for creators, managers, and users of records' Chapter 9 of *Political Pressure and the Archival Record* edited by Margaret Procter, Michael Cook, and Caroline Williams Chicago, American Society of Archivists, 2005, pp. 134-137, This gives a succinct summary of the 'Heiner Affair'.

13 Chris Hurley, 'Political Pressure and the Archival Record Revisited' *International Congress of Archives Conference: Archives, Memory, and Knowledge*, Vienna, August 2004, p. 4. This gives a succinct description of ad hoc appraisal. This paper can be consulted at on line at the website for the Records Continuum Research Group at <<http://www.sims.monash.edu.au/research/rcrg/publications/index.html>>.

14 Forde Commission of Inquiry into the Abuse of Children in Government & Non-Government Institutions or Detention Centres, 1998.

15 The question, raised in Juvenal's 6th Satire, points to a flaw in the role Plato assigns to elite guardians within the ideal state he posits in his *Republic* (Book IV).

16 Guy Chapman, *The Dreyfus Trials*, London, BT Bratsford, 1972, p. 251.

17 For the 1999 ASA Statement see the reference in endnote 1 (above).

18 Standards Australia, *Australian Standard for Records Management – AS ISO 15489* (formerly AS 4390). AS 4390 was formally withdrawn and replaced by AS ISO 15489 in March 2002.

19 A Public Statement by the ASA published on pp. 140-2 of the *ASA Bulletin* for August 1997.

20 See endnote 24 below.

21 See endnote 1 above.

22 Posting on behalf of ASA Council on Aus-archivists listserv on 16 April 2003 at <<http://lists.archivists.org.au/pipermail/archivists.org.au/aus-archivists/>>.

23 Refer to endnote 1 above.

24 A Motion of the Council of Federal, State and Territory Archives (COFSTA) in December 1996 (reprinted in the *ASA Bulletin*) and A letter from COFSTA to the ASA President of 18 March 1999 published in the same issue of the *ASA Bulletin*.

25 Rick Barry, *op. cit.*, pp. 139-40.

26 For an outline and analysis of the McCabe Case and its consequences see Chris Hurley, 'Recordkeeping, Document Destruction, and the Law (Heiner, Enron and McCabe)' *Archives and Manuscripts*, vol. 30, no. 2, November 2002, pp. 6-25 and Camille Cameron, 'The Duty to Preserve Documents Before Litigation Commences' *Archives and Manuscripts*, vol. 32, no. 2, November 2004, pp. 70-89. Subsequently, the Victorian Government enacted the *Crimes (Document Destruction) Act* 2006 which materially expands the scope of the statutory prohibition on pre-trial destruction of documentary evidence.

27 Since the 2004 paper, ASA initiated a further review of the Appraisal Policy. At the time of publication, it remains unclear how far (if at all) these objections will be overcome.

28 After this paper was delivered, I was invited to make a formal proposal to ASA Council on this matter. Having done so, I learned some time later from a notice in the ASA's *Bulletin* that my suggestion has been unceremoniously and decidedly rejected by the ASA Council.

29 Chris Hurley, 'Recordkeeping and accountability' in Sue McKemmish, Michael Piggott, Barbara Reed & Frank Upward (eds) *Archives: Recordkeeping in Society*, Centre for Information Studies, 2004, Topics in Australasian library and information studies, no. 24, pp. 223-253.

30 I am indebted to FE Smith who was pleading in court when the judge said: 'It's no use, Mr Smith, all this is going in one ear and out the other'. To which Smith replied: 'Owing, no doubt, to the fact that it encounters no obstacle there, m'lud'.