



AUSTRALIAN
SOCIETY of
ARCHIVISTS Inc.

Mr Alistair Sands
Secretary
Senate Select Committee on the Lindeberg Grievance
The Senate
Parliament House
Canberra ACT 2600

28 May 2004

Dear Mr Sands

**ASA SUBMISSION TO THE SENATE SELECT COMMITTEE ON THE
LINDBERG GRIEVANCE**

The Australian Society of Archivists (ASA) welcomes the opportunity to provide a submission to the Senate Select Committee on the Lindeberg Grievance and to publicly state its position on the 'Heiner Affair' and the archival issues raised by this matter.

The ASA has monitored developments in the 'Heiner Affair' for many years. The ASA has a particular interest in promoting the cause of good recordkeeping and professional archival best practice. As a notable example of failed recordkeeping, the 'Heiner Affair' compels the ASA to take a strong public position on the recordkeeping issues that the case has highlighted.

If you would like to discuss any aspect of this Submission, please contact me on asapresident@emailme.com.au or tel. (03) 9602 3161.

Yours sincerely

A handwritten signature in cursive script that reads "S. Yorke".

Stephen Yorke
ASA President

ASA SUBMISSION TO THE SENATE SELECT COMMITTEE ON THE LINDBERG GRIEVANCE

This document is a submission by the Australian Society of Archivists Inc. (ASA) in response to the request for public submissions by the Senate Select Committee on the Lindeberg Grievance.

The ASA is the professional organisation in Australia representing archivists and recordkeepers. Information about ASA aims, membership, and activities are set out at Attachment A.

For any questions on this Submission, please contact Stephen Yorke, President, at asapresident@emailme.com.au or tel. (03) 9602 3161.

BACKGROUND

The Australian Society of Archivists Inc. (ASA) has monitored developments in the 'Heiner Affair' for many years. The ASA has a particular interest in promoting the cause of good recordkeeping and professional archival best practice. As a notable example of failed recordkeeping, the 'Heiner Affair' compels the ASA to take a strong public position on the recordkeeping issues that the case has highlighted.

A detailed listing of the ASA's actions on the 'Heiner Affair' are available at Attachment B.

ISSUES

The ASA would like to raise issues in relation to the following elements of the Committee's terms of reference:

- (a) whether any false or misleading evidence was given to the Select Committee on Public Interest Whistleblowing, the Select Committee on Unresolved Whistleblower Cases or the Committee of Privileges in respect of the matters considered in its 63rd and 71st reports: and whether any contempt was committed in that regard, having regard to previous inquiries by Senate committees relating to the shredding of the Heiner documents, the fresh material that has subsequently been revealed by the Dutney Memorandum, and Exhibits 20 and 31 tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions, and any other relevant evidence;
- (b) implications for this matter which should be taken:
 - (i) to prevent the destruction and concealment by government of information which should be available in the public interest;

(a) False and misleading evidence

The role of the archivist in determining the retention and disposal of records

In relation to item (a) of the Terms of Reference, the ASA would like to draw the Committee's attention to the assertions made by the Queensland Criminal Justice

Commission (CJC) about the role of the archivist. We would also like to note that the CJC has taken inconsistent positions on this question at different times.

In 1991, the Criminal Justice Commission put the following views to the Electoral and Administrative Review Commission's Issue Paper No 16 *Archives Legislation* [Submission 13] concerning the archivist's role in archives and public record management.

In response to the following question, the CJC said (page 4):

"When authorising disposal of public records should the Archives have regard to the present needs of accountability or concentrate only on future historical research needs? If so, what person or body should be responsible for ensuring that government agencies properly create, maintain, use and preserve public records, and how should this be done?"

It is noted that EARC in the Issues Paper refer to the CJC as one of the bodies that is impeded in carrying out its functions by poor record keeping and the unauthorised or unlawful destruction of records. The experience of the Fitzgerald Commission and those of the CJC clearly establish this.

For reasons that relate to its functions, the CJC certainly supports the view that the Archives should have regard to the present needs of accountability, i.e. "the audit purpose." Maintenance of proper records and records systems assist in ensuring public bodies act responsibly and public officials act within the law.

It would seem to the CJC that the responsibility for record management is appropriately an archival function, and concentration of all matters connected with archives in one body enhances the abilities of that body to effectively achieve its overall purposes. Therefore, the CJC believes that the Queensland State Archives (or however the body is called) should have the responsibility for ensuring that government agencies create, maintain, use and preserve public records."

In direct contradiction to its earlier public position, on 23 February 1995, before the Senate Select Committee of Unresolved Whistleblower Cases, Mr Barnes (speaking with the full authority of the CJC) said this at page 108 Senate Hansard:

"The archivist's duty is to preserve documents which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the State."

This contradictory statement to the Senate on the role of the State Archivist was drawn to the attention of the Office of the Parliamentary Criminal Justice Commissioner in 1999 (see Attachment D).

The ASA's 1997 public statement on the 'Heiner Affair' was issued to refute the CJC's misleading and contradictory assertion on the role of the archivist.

Archivists do not just take into account the historical interest in records. There are a wide variety of factors which inform an appraisal decision. These factors include, but are not limited to, an assessment of the value of the records as evidence for determining and protecting a citizen's rights, as evidence of financial affairs and obligations, and a wider community interest in the records. Information concerning upcoming legal proceedings or risk assessments of the necessity for retaining records for envisaged legal proceedings is

another factor which must be incorporated into the appraisal decision and the justification for retaining records.

These factors or criteria for appraisal were recognised formally in the definition of appraisal in the *Australian Standard on Records Management*, AS 4390 – 1996:

“Appraisal is the process of evaluating business activities to determine which records need to be captured and how long the records need to be kept, to meet business needs, the requirements of organizational accountability and community expectations.”¹

Additionally, state archival authorities and the National Archives of Australia have published criteria, developed through consultation with the public and other stakeholders, for the appraisal of public records.²

(b) (i) prevention of destruction and concealment of government information

The ASA would like to raise the following two issues in relation to (b) (i) of the Terms of Reference. They are:

1. The importance of recordkeeping in accountability
2. Appraisal and disposal of public records

1. The importance of recordkeeping in accountability

The mechanisms for accountability within the public and private sectors cannot work properly without good records. Records are the primary means by which agencies and companies explain their decisions and prove what they have done. The requirement for explanation and proof might come in the form of a simple query from a member of the public, a formal Freedom of Information request, or an inquiry by the Ombudsman or Auditor-General, or a member of a company's board.

Records are a particular form of information which has been

‘created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business.’³

Public records provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

Records are evidence and need to be managed within appropriate frameworks and systems. The implementation of sound recordkeeping procedures, based upon Australian

¹ AS 4390 - 1996: *Records Management*, Part 1, Clause 8.1 (this Australian standard formed the basis of the Australian Standard AS/ISO 15489 – 2002: *Records Management*)

² For example: State Records NSW, *Building the Archives*, available at <http://www.records.nsw.gov.au/publicsector/disposal/appraisalpolicy/forewordandtoc.htm>; National Archives of Australia, *Why Records Are Kept*, available at http://www.naa.gov.au/recordkeeping/disposal/why_keep/foreword.html

³ AS/ISO 15489:1 – 2002, *Records Management, Part 1: General*, Clause 3.15

and International best practice, prevent the destruction and concealment of records and the information they contain. If such frameworks do not exist, records are vulnerable to destruction and concealment.

The principles of good recordkeeping are promoted in the Australian Standard/International Standard ISO 15489 – 2002: *Records Management* which has been universally endorsed by the archival and recordkeeping community in Australia.

As noted in the ASA's public statements of 1997 and 1999, the making and keeping of a full and accurate record of the conduct of government business is a key issue in the 'Heiner Affair' and the Lindeberg Grievance. Without the maintenance of the integrity of the public record, the operation of a free and democratic society is impeded.

"Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens."⁴

2. Appraisal and disposal of public records

It is alleged that in 1990, the then Queensland State Archivist, Ms Lee McGregor, was requested to approve the destruction of records compiled by Noel Heiner during his 1989 investigation of the John Oxley Youth Centre. The State Archivist was not advised that access to the records was being sought in relation to legal claims arising out of the investigation. The records were destroyed.

As noted in our public statements of 1997 and 1999, the ASA criticises the Queensland Government for:

- political interference in the processes of appraisal and disposal of public records, processes that should be the responsibility of an independent archival authority;
- withholding from the Archivist the knowledge that the documents in question were required for foreshadowed legal proceedings; and
- asserting that the Archivist should only consider the historical value of records when making a decision about the retention or disposal of public records."⁵

The Society believes that it is clear from evidence that has been gathered by Mr Kevin Lindeberg over the last few years, that these criticisms were justified.

2.1 Impartiality of the appraisal process

While it is not reasonable to retain every document created by a government in the course of its administration, it is vital to its accountability that government ensures that a full and accurate record of its administration is available to withstand the scrutiny of the Parliament and the People.

⁴ The 'Heiner Affair' – a public statement by the Australian Society of Archivists, June 1997. Available at <http://www.archivists.org.au/pubs/positionpapers/heiner.html>

⁵ Ibid.

The process for determining which public records should be kept and which should be disposed, known as the appraisal process, rests with the archivist. This was formally recognised in the provisions of the *Libraries and Archives Act 1988* (QLD). Fundamental to the appraisal process is the impartiality, independence and professionalism that the archivist brings to the process, in order to act in the broadest public interest and as a key agent of public accountability.

If government archivists are to engage in their role as a key agent of public accountability, then they require appropriate statutory independence from political or other improper interference in the discharge of their responsibilities to appraise the public record. The provisions of the *Libraries and Archives Act 1988* (QLD) did not provide the State Archivist with any level of protection from political or bureaucratic interference in disposal decisions. Provisions in the *State Records Act 1998* (NSW) and its predecessor legislation, the *Archives Act 1960* (NSW), prevent Ministers and bureaucrats from directing the archivist on disposal decisions, thus ensuring that there is no improper pressure to approve destruction.

As noted in our public statement of 1999:

It is the view of the ASA that it is not unreasonable to conclude that political pressure was, at the very least, a contributing factor to the faulty appraisal processes that were observed in the case of the Heiner documents. The Queensland Cabinet requested the State Archivist to give her approval for the destruction of the records within 24 hours. Such a request from Cabinet is highly likely to have caused a departure from the more orderly and considered appraisal procedures which the community has a right to expect from government archives.⁶

The independence and impartiality of the archivist have been recognised in the *Public Records Act 2002* (QLD) at s.27 (1):

The archivist and the staff of the archives are not subject to the control or direction of a Minister or a department in relation to making decisions about the disposal of public records.

2.2 Withholding of information

Critical to any appraisal decision is an understanding of recordkeeping requirements and other contextual information which explains the administrative process in which the records were created. In the 'Heiner Affair' we believe it has been demonstrated that the Archivist was not adequately advised about the records and the Government knowingly withheld information about impending legal proceedings.

If the archivist is not in possession of all information and facts concerning a business function or group of records, then an informed appraisal decision is not possible and it is less likely that a satisfactory appraisal outcome will be reached.

The withholding of information from the Queensland State Archivist means that the Archivist was not able to discharge her responsibilities in an impartial or considered manner.

⁶ Ibid

2.3 Ad hoc disposal

Best practice appraisal of records is not achieved through the examination of each single record for historical merit, but rather the examination and analysis of the business function that the record documents. Thus those records of a business function of an organisation or a public administration which are required to provide evidence of the organisation's accountability are retained. Archivists should endeavour to minimise the risks involved in appraisal by 'instituting and observing appraisal policies and procedures that are consistent with international professional best practice.'⁷

The disposal decision made by the State Archivist in relation to the Heiner material was an ad hoc decision. It was a decision made in a short time frame. It was also made in the absence of a records disposal authority. Records disposal authorities (containing disposal rules and policies) when applied by archivists to records, produce consistent disposal outcomes. Sound appraisal regimes, consisting of records disposal authorities, appraisal criteria, and disposal rules and policies should be put into place to support the appraisal process that are open to public scrutiny and are understood and accepted.

The appraisal decision did not conform to standards of best practice. It is clear from the Morris/Howard Report, that as the Archivist was advised of the potentially defamatory material contained within some of the Heiner documents, the appraisal of the Heiner material should have been less hurried and more considered.

⁷ ASA 1999 statement

Attachment A

About the Australian Society of Archivists Inc.

The mission of archivists is to ensure that records which have value as authentic evidence of administrative, corporate, cultural and intellectual activity are made, kept and used. The work of archivists is vital for ensuring organisational efficiency and accountability and for supporting understandings of Australian life through the management and retention of its personal, corporate and social memory.

The Australian Society of Archivists Inc. (ASA) is the peak professional body for archivists in Australia. It was formed in 1975 in response to the growing number of archivists in Australia and to the increasing demand for archival skills. The Society is administered on a national basis by an elected Council. Branches and Special Interest Groups, are active in the States and Territories. The Society has some 800 members, largely employed by government agencies and business organisations.

The objectives of the Australian Society of Archivists are to:

- promote a professional identity amongst archivists;
- promote the keeping care and use of archives and encourage research and development in all areas of archival practice;
- establish and maintain standards of archival practice and professional conduct amongst archivists, including standards of archival qualifications and professional training;
- encourage the responsible use of archives including cooperating with other organisations and groups with common interests and concerns;
- encourage communication and cooperation amongst archivists, their institutions and the users of archives; and
- publish and disseminate information relevant to the archival profession.

Further information about the Australian Society of Archivists' activities is available at www.archivists.org.au

Attachment B

The ASA has:

- issued 'The Heiner Affair – a public statement by the Australian Society of Archivists' on 16 June 1997 (see Attachment C)
- sent a copy of the 1997 ASA Statement to the Senate Standing Committee on Privileges investigation of the Queensland Criminal Justice Commission (QCJC). The ASA President indicated to the Secretary that the Society would be interested in discussions.
- sought support from the Society of American Archivists and the Academy of Certified Archivists for the 1997 ASA Statement to send to the Senate Committee on Privileges. The Academy of Certified Archivists produced their own statement, drawing on the ASA document, which the Society sent to the Committee. The Society of American Archivists expressed support for the archival principles underlying the statement and a copy was sent to the Committee.
- issued 'The Heiner Affair – A Position Statement' on 18 March 1999 (see Attachment C)
- requested the Queensland Parliamentary Criminal Justice Committee "to appoint a special prosecutor with sufficient powers to investigate the actions and inactions of the CJC and others in relation to the Heiner affair and to launch prosecutions (where necessary) against any officials who may be implicated as a result of these investigations." (8 October 1999, President Cunningham to Commissioner Julie Dick, the Parliamentary Criminal Justice Commissioner) see Attachment D. On the advice of Commissioner Dick, a copy of this letter was sent to Mr Paul Lucas MLA, Chairman, Parliamentary Criminal Justice Committee, stating that "It is the contention of the Australian Society of Archivists that the matters raised in my earlier letter do indeed warrant further investigation. I hope that your Committee agrees with this conclusion and does what it can to ensure that a full investigation is pursued into the actions and inactions of the CJC in relation to the Heiner Affair."
- requested that the International Commission of Jurists (ICJ) to take a "public position on the still unresolved issues associated with prima facie instances of undermining of the rule of law and possible systemic corruption in connection with the Heiner Affair. It is the view of the ASA that maintenance of the integrity of the public record is an essential pre-condition to the rule of law and that this integrity was seriously breached in the case of the Heiner affair. Such breaches demand thorough investigation. Indeed, it is the view of the ASA that the absence of such an investigation by the CJC and other arms of government accountability in Queensland is as deserving of condemnation and investigation as the original acts of records destruction themselves". (2 December 1999 President Cunningham to The Hon. Justice Dowd, President, International Commission of Jurists)
- provided extensive comment on the proposed Queensland Public Records Bill 2001. A copy of our submission is available at <http://www.archivists.org.au/council/subs/qldpublicrecordsbill.html>

Attachment C

Australian Society of Archivist's Position Statement on the Heiner Affair⁸

BACKGROUND

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially the *Weekend Independent*) and in Queensland Government (Morris & Howard 1996) and Senate (Select Committee on Unresolved Whistleblower Cases 1995) reports. In addition, the Acting Chief Archivist of New Zealand, Chris Hurley, has prepared a detailed analysis of the Heiner Affair from an archival perspective. This report, entitled "The Shredding of the Heiner Documents: an appreciation" can be found on the Internet at <http://www.caldeson.com/RIMOS/heiner.html>. In June 1997 the Australian Society of Archivists (ASA) issued a public statement on some aspects of the Heiner Affair. The 1997 statement is attached as an appendix to this position paper. More recently the case received national media coverage when Channel 9's Sunday Program aired a feature on the affair.

Since 1997 there have been a number of further developments in the Heiner Affair. Most particularly, during 1998 it was revealed that the evidence which was collected by the aborted Heiner inquiry and which was subsequently destroyed included allegations of inmate abuse at the John Oxley Youth Centre during the late 1980s. These and other allegations led to the establishment of the Forde inquiry into allegations of child abuse in Queensland Government institutions. In light of these developments the ASA has decided to issue a position statement that updates and expands upon its 1997 public statement.

The Australian Society of Archivists has been closely monitoring developments in the Heiner affair for many years. It has a particular interest in promoting the cause of good recordkeeping and professional archival best practice. As a notable example of failed recordkeeping, the Heiner affair compels the ASA to take a strong public position on the recordkeeping issues that the case has highlighted.

Aspects of the Heiner Affair which are of most concern to archivists have to do with making and keeping a full and accurate record of the conduct of government business and the basis on which government archivists give their consent to destruction of official records. In 1990, Queensland's Cabinet requested the consent of the State Archivist for the destruction of records compiled by Noel Heiner during his 1989 investigation of the John Oxley Youth Centre. Unbeknown to the archivist, access to the records was being sought in relation to legal claims arising out of the investigation.

The question arose whether the State Archivist should have prevented the destruction to protect an intending litigant's right to pursue his claim in court. In the course of the 1995 Senate Inquiry, the Queensland Criminal Justice Commission, under attack for its handling

⁸ Issued by the Council of the Australian Society of Archivists on 18 March 1999

of the case, claimed that these matters were not the State Archivist's concern. Our 1997 Statement was issued in large part to refute that claim.

The decision by the Queensland State Archives to approve the destruction of the Heiner documents

The ASA's 1997 Statement on the Heiner Affair criticised the Queensland Government for:

- political interference in the processes of appraisal and disposal of public records, processes that should be the responsibility of an independent archival authority;
- withholding from the Archivist the knowledge that the documents in question were required for foreshadowed legal proceedings; and
- asserting that the Archivist should only consider the historical value of records when making a decision about the retention or disposal of public records.

The ASA stands by these criticisms, but now wishes to add to its earlier comments on the specific merits of the disposal decision and the lessons that can be learned from the experience.

This case highlights the difficulties associated with determining whether to retain or dispose of public records. It is neither possible nor desirable to retain every single document created in the course of public administration. One of the most important responsibilities, therefore, of government archivists is to determine which public records should be retained, which should be destroyed and when.

Although government archivists endeavour to acquit this responsibility with the utmost care and professionalism, the sheer volume of material that archivists are called upon to consider means that detailed examination of records during appraisal is simply not feasible. In view of this, it is accepted professional practice for archivists to assess the significance of the function which the records document, rather than pass judgement on the individual documents themselves. While hindsight will always reveal examples of incorrect appraisal decisions, archivists should endeavour to minimise the risks involved by instituting and observing appraisal policies and procedures that are consistent with international professional best practice.

In relation to the Heiner case, it is the view of the ASA that, while the Archivist acted in good faith, nevertheless the appraisal of the documents did not conform to these standards of best practice and, hence, was not conducive to a more satisfactory outcome. Firstly, the ad hoc nature of the disposal ruling highlights the fact that it was made in the absence of a relevant pre-existing records disposal authority. Such ad hoc appraisal decisions were and still are not uncommon in State government archives.

It is, however, the view of the ASA that nowadays, in accord with the 1996 Australian Records Management Standard (AS 4390, Part 5 – Appraisal and Disposal), as far as possible all appraisal rulings should be made with reference to records disposal authorities. Secondly, and more importantly, the speed with which the Heiner appraisal was conducted

suggests that there was a departure from the usual orderly processes of appraisal that should occur in government archives.

In view of subsequent revelations which have led to the establishment of the Forde Inquiry, the continued relevance of the Heiner documents can now be seen in relation to allegations of a systemic failure in the management of the State's institutions and the treatment of those who were placed in their charge. There have been many examples in Australia of systemic failure within government (Queensland's own Fitzgerald Inquiry being notable amongst other revelations). Almost always, as Fitzgerald himself found, a recordkeeping failure of some kind is involved. At best, records are badly kept and fail to provide the basis for internal review and reform or external scrutiny and audit of imperfect systems. At worst, records were tampered with or destroyed to obscure evidence of mismanagement or misdeeds. Where allegations of mismanagement and abuse cannot be sustained, good recordkeeping is the most reliable assurance the public can have that government systems are working properly.

In relation to the Heiner case, the State Archivist has stated unequivocally that her assessment of the records did not reveal to her the existence of any inmate abuse allegations. In view of that, we are not prepared to say that the appraisal was flawed on the grounds that she knowingly gave her approval for the destruction of material which ought not to have been destroyed. Based on what we now know we are, however, prepared to state that the records containing allegations concerning treatment of inmates which were part of the Heiner documents should not have been destroyed. It is clear from the Morris/Howard Report that the Archivist was alerted to the arguably defamatory nature of some of the Heiner documents, so the need for careful scrutiny from this point of view was greater than normal.

It is the view of the ASA that it is not unreasonable to conclude that political pressure was, at the very least, a contributing factor to the faulty appraisal processes that were observed in the case of the Heiner documents. The Queensland Cabinet requested the State Archivist to give her approval for the destruction of the records within 24 hours. Such a request from Cabinet is highly likely to have caused a departure from the more orderly and considered appraisal procedures which the community has a right to expect from government archives.

The lessons learnt

The Heiner affair highlights two fundamental truths about which the ASA is emphatic:

1. That government archivists are key agents of public accountability and that, as such, they must have an adequate charter including statutory independence from political or any other improper interference in the discharge of their duties and responsibilities. Successive Queensland Governments have failed to enact the new archives legislation proposed by the Electoral and Administrative Reform Commission (EARC) following upon Fitzgerald's findings. The ASA reiterates its earlier demand that the Queensland Government enact legislation which guarantees the role and future

independence of the State Archivist in order to help ensure the integrity of the public record in that State.

2. That government archivists must at all times endeavour to observe professional appraisal and disposal practices and procedures governed by an orderly regime of records disposal authorities and that, in particular, archivists should strongly resist any pressure to make hasty and/or ad hoc appraisal decisions.

Appendix: The 'Heiner Affair' – a public statement by the Australian Society of Archivists [June 1997]

Background

The public unfolding of the complex sequence of events known as the 'Heiner Affair' has been reported and reviewed in the press (especially the Weekend Independent) and in Queensland Government (Morris & Howard 1996) and Senate (Select Committee on Unresolved Whistleblower Cases 1995) reports. It will not be repeated here. The ASA presents this public statement within the full context of the events of the Heiner Affair as they have unfolded since 1989.

The integrity of the public record

The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

In recent years there have been a number of instances of serious disregard for the integrity of public records in Australia. Some examples include those highlighted by 'W.A. Inc.' Royal Commission, the 1994 destruction of Special Branch records in New South Wales and the so-called 'Heiner Affair' in Queensland. This trend is a matter of profound concern to the Australian Society of Archivists (ASA) and should also be of the gravest concern to society as a whole.

Archivists, as impartial and independent professionals, play a vital role in defending the integrity of public records. Cases such as the Heiner Affair highlight the fact that government archivists need statutory independence such as that afforded the Auditor-General.

The greatest threat to the integrity of the public record is the unwarranted destruction of important documents. The ASA strongly asserts that records should only be destroyed when an archivist reaches a professional decision that the financial costs of preserving and maintaining access to the records are not justified by their estimated ongoing utility, value and significance. In other words, records should only be destroyed when they are no longer required for the purposes of individual, corporate or societal accountability and reference.

The process of disposal and destruction of public records should be orderly. It should be guided by established administrative procedures which in turn are based upon internationally recognised archival principles.

The 'Heiner Affair'

'The 'Heiner Affair' has revealed serious shortcomings in the management of public records in Queensland at that time. A number of significant details relating to the case have only come to public attention in recent months, most particularly with the release of a report to the Queensland Government of an investigation into the affair by barristers Anthony Morris QC and Edward Howard. It is the view of the ASA that these revelations have strengthened the case for new archival legislation within that State.

The Morris/Howard report reveals details of the case which are deeply disturbing to the archival profession in Australia. The report reproduces a letter from the Queensland Cabinet Secretary to the Queensland State Archivist dated 23 February 1990, which requested the Archivist's approval for the destruction of the records in question. The ASA notes the conclusions of the Morris/Howard report which state that the disposal authorisation issued by the State Archivist in response to this letter was made in apparent ignorance of the fact that the records were likely to be required for future legal proceedings. This deliberate withholding of vital information necessary for a fully informed disposal decision is inexcusable. The ASA strenuously asserts that archivists should not be treated as 'rubber stamps' by governments wishing to rid themselves of potentially embarrassing records. Records creators and managers must make available to the archivist all pertinent information relating to the ongoing legal/administrative significance of records subject to disposal determinations.

The ASA also wishes to place on record its absolute rejection of the argument which the Queensland Criminal Justice Commission placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995, to wit that archivists should only consider the historical significance of records when reaching a disposal decision. There are a wide variety of factors which might inform a decision to retain or destroy a particular set of records. These factors include, but are not limited to, the value of the records as evidence of financial affairs and obligations and the value of the records as evidence relating to citizen's rights. Any indication that records are likely to be required in future legal proceedings should, by itself, be sufficient justification to warrant the retention of the records in question.

The Australian Society of Archivists calls upon the Queensland Government to enact legislation which guarantees the future independence of the State Archivist, including protection from political interference, in order to ensure the integrity of the public record in that State.

See <http://www.archivists.org.au/pubs/positionpapers/heiner.html>

8 October 1999

Commissioner Julie Dick SC
Office of the Parliamentary Criminal Justice Commissioner
Parliament House
George Street
BRISBANE QLD 4000
(fax: 07/3234-0268)



AUSTRALIAN
SOCIETY of
ARCHIVISTS Inc.

Dear Commissioner Dick

It has been brought to the attention of the Australian Society of Archivists (ASA) that you are currently reviewing evidence presented at the Connolly/Ryan Inquiry into the Queensland Criminal Justice Commission (CJC), with a view to determining whether any matter therein justifies referral for further investigation on the grounds of suspected misconduct by the CJC.

One of the matters canvassed by the Connolly/Ryan Inquiry was the so-called 'Heiner Affair', which involved the shredding of records gathered in evidence presented to the inquiry conducted by Noel Heiner into the operation of the John Oxley Youth Detention Centre.

The circumstances of the Heiner Affair are not only of tremendous interest to the archival profession, they are also of critical importance to the operation of a just and democratic society in Queensland. The operation of a free and democratic society depends upon the maintenance of the integrity of the public record. Public records are a key source of information about government actions and decisions. They provide essential evidence of the exercise of public trust by public officials. This in turn helps ensure public accountability and protection of the rights of citizens.

As key agents of democratic accountability, it is vital that institutions such as the Criminal Justice Commission and the Queensland State Archives (QSA) are seen to be acting impartially and independently of the government of the day. It is our view that some of the actions and inactions of the CJC in relation to the Heiner Affair have seriously impaired the public's faith in the independence and effectiveness of both the CJC and the QSA.

Specifically, there are two matters in relation to the CJC's actions and public statements in relation to the Heiner affair that, in our view, warrant referral for further investigation.

First, there is the CJC's inaction in pursuing the unauthorised records disposal actions of 22 and 23 May 1990 relating to portions of the Heiner records. These actions were highlighted in the Morris/Howard report of 1996. In respect of these actions, it has been established that certain public officials specifically rejected advice telling them that prior approval from the State Archivist was required before records disposal

could proceed. The CJC has never considered this matter, and yet in its submission to EARC in November 1991, it said this on page 5:

"Should archives legislation explicitly provide that, in addition to, or as an alternative to, the commission of a criminal offence, a public servant who fails to comply with a requirement of archives legislation commits a disciplinary offence?"

The CJC believes that it is essential to establish firmly in the minds of all public servants the importance of complying with the requirements of archive legislation, and therefore any steps that can be taken to strengthen the remedies for failure to do so should be taken.

Undoubtedly there will be occasions when it is more appropriate to deal with a failure to comply on the basis of it being a criminal offence, whilst at other times the incident would be more appropriately dealt with as a disciplinary matter. The two should be alternatives."

Second, there is the matter of the CJC's publicly stated views on the role of the State Archivist in relation to determining the retention or otherwise of public records.

The evidence is that the CJC has adopted a contradictory position in this matter (that is, it has not acted in compliance with section 22 of the Criminal Justice Act 1989). On 26 November 1991, it put the following views to the Electoral and Administrative Review Commission's Issue Paper No 16 "Archives Legislation" [Submission 13] concerning the archivist's role in archives and public record management.

In response to the following question, the CJC said (page 4):

"When authorising disposal of public records should the Archives have regard to the present needs of accountability or concentrate only on future historical research needs? If so, what person or body should be responsible for ensuring that government agencies properly create, maintain, use and preserve public records, and how should this be done?"

It is noted that EARC in the Issues Paper refer to the CJC as one of the bodies that is impeded in carrying out its functions by poor record keeping and the unauthorised or unlawful destruction of records. The experience of the Fitzgerald Commission and those of the CJC clearly establish this.

For reasons that relate to its functions, the CJC certainly supports the view that the Archives should have regard to the present needs of accountability, i.e. "the audit purpose." Maintenance of proper records and records systems assist in ensuring public bodies act responsibly and public officials act within the law.

It would seem to the CJC that the responsibility for record management is appropriately an archival function, and concentration of all matters connected with archives in one body enhances the abilities of that body to effectively achieve its overall purposes. Therefore, the CJC believes that the Queensland State Archives (or however the body is called) should have the responsibility for ensuring that government agencies create, maintain, use and preserve public records."

Unquestionably the "audit purpose" (which the CJC plainly always knew about) must encompass taking into account "legal and administrative" values as applies in the Heiner matter. In direct contradiction to its earlier public position, on 23 February 1995, before the Senate Select Committee of Unresolved Whistleblower Cases, Mr Barnes (speaking with the full authority of the CJC) said this at page 108 Senate Hansard:

"The archivist's duty is to preserve documents which may be of historical public interest; her duty is not to preserve documents which other people may want to access for some personal or private reason. She has a duty to protect documents that will reflect the history of the State."

The ASA has publicly rejected this view of the role of the State Archivist. I refer you to the attachment to this letter for a copy of our public statements on this matter.

It is the view of the ASA that the combination of the CJC's inaction in relation to investigating the unauthorised Heiner records disposal actions and its deliberately misleading and contradictory statements to the Senate on the role of the State Archivist together represent a *prima facie* case of serious misconduct that warrants referral for further investigation.

The Heiner case has been a running sore in the Queensland body politic for too long now. The fact that the citizens of Queensland have waited almost ten years and have not yet secured an adequate resolution of the circumstances surrounding the Heiner affair reflect poorly on the manner in which the CJC has acquitted its role as public watchdog. The public is entitled to know whether the standards applied in the Heiner Affair are still operating in the Department of Families, Youth and Community Care and other government agencies, including the CJC itself.

The ASA calls upon the Queensland Parliamentary Criminal Justice Committee to appoint a special prosecutor with sufficient powers to investigate the actions and inactions of the CJC and others in relation to the Heiner affair and to launch prosecutions (where necessary) against any officials who may be implicated as a result of these investigations.

Yours sincerely



Adrian Cunningham
President