Submission to the Functional and Efficiency Review of the National Archives of Australia (NAA), June 2019

Michael Piggott, AM

The following draws on many years in the archives sector including a decade working for NAA at Director level; involvement in developing agreements with NAA previously while Senior Curator at the Australian War Memorial and later while University Archivist at the University of Melbourne; and the compilation of an NAA commissioned research guide *Commonwealth Government Records About Tasmania*. I have been a member of the ACT's Territory Records Advisory Council since 2014, and currently am its Chair.

As the review advises the best submissions are, for some reason, generally no longer than four to five pages, I'd like to offer two points for consideration. (In less optimal circumstances, much more could and needs to be said.) Neither should be taken as reflecting on the diligence or professionalism of past or current NAA staff.

Clarity of role

What is the NAA's responsibility for official information/data *separate from* its functions and powers in relation to Commonwealth records, recordkeeping metadata etc.?

Background

Since the 1983 Archives Act, the NAA has been about archives – hence its name, and about records – hence the bedrock concepts of "Commonwealth records" and "archival resources of the Commonwealth". Thus the review website refers to the NAA's "fundamental role of securing, preserving, maintaining and making accessible the authentic and essential records of the decisions and actions of government, while providing high standards of service delivery that all Australians should expect from their National Archives". Its Vision refers to "archives" and Mission refers to "records". Nothing about information or data.

These two concepts, archives and records, have actual meaning. For almost a century the ideas and principles behind them have been articulated, debated and theorised about in the professional literature, taught and researched in higher education institutes.

Discussion

What then of information and data? The NAA's long established position was twofold:

- archives/records on the one hand and information/data on the other are related, *but they are not the same thing*; the 1983 Act's definition of "record" explains the relationship – a record is, inter alia, a document which *contains* information or *from which* information can be obtained (s 3.1), and an "exempt record" (s 33) is one which *contains* information or matter of specified kinds; and
- for purposes of business efficiency, democratic accountability and cultural heritage, agencies should manage their information/data, and of course they must manage their records (which contained information), with NAA working in partnership with

bodies such as the Office of Government Information Technology and the Information Management Steering Committee.

In recent years, the NAA has presented itself as the lead agency for information/data management across the APS. The strategic advantage, facilitated by a property definition of record, apparently solves the definitional and communication challenges of the digital age. Whether the bycatch, to adopt a fishing industry analogy, is information or records doesn't matter. No need to differentiate records, especially when addressing agency staff, contractors and vendors. As a bonus, the convenient fudge perpetrated for the greater good gets around the negative image archives and records are presumed to have in the 21st century.

As a result, NAA's conceptual thinking presents as muddled and careless, as any reading of policy and other texts on its website attests. Further instances can be seen in its submission to the Joint Standing Committee on the National Capital and External Territories' 2018 inquiry into Canberra's national institutions chaired by Ben Morton, and in recent Annual Reports.

Thus, sometimes information/data and records are conflated; records are "any information created, sent or received in the course of carrying out the business of an agency" (Annual Report 2017-18, p 86). Sometimes by using the phrase information *and* records, the message is they are different. Sometimes there is reference to information, and at other times to business information or digital information; sometimes to data and at other times metadata, big data or datasets. Sometimes the terms are lumped into a single bucket labelled digital assets.

What have successive governments wanted?

As in many years previously, the AAOs issued on 29 May 2019 allocated to the NAA the "management of government records", nothing more. Presumably that's what it is funded for. It was to Prime Minister & Cabinet that "public data policy and related matters" was allocated. As we know, many agencies collect, receive, manage, share, subpoena, analyse, visualise, manipulate, broadcast and protect information, including a Minister's twitter feed, medical imaging reports, population statistics, geospatial data, and security surveillance and intelligence products. The relevant policy compliance regulatory and digital transformation frameworks are led by PM&C and its programs (public data) and agencies (egs the Office of the National Data Commissioner; the Digital Transformation Agency) and by Attorney-General's (i.e. the Office of the Australian Information Commissioner). Issues involving cyber security, ITC procurement and the information economy bring other agencies into play (egs the Australian Cyber Security Centre and the Australian Digital Health Agency).

A plea

Recent media stories (ABC, ANU) and earlier controversies (metadata retention laws) remind us that the information/data territory is complicated complex and fraught, especially for governments. The background of its current D-G aside, what is NAA's staff special expertise here; what is their value add? Being highly competent recordkeeping professionals, surely they (like Geoffrey Yeo in his *Records Information and Data* published by Facet last year) can readily articulate the differences and relationships; the question is, strategically, do they want to? NAA told the 2018 Morton inquiry it is "the lead agency for information

management in the Australian government". Elsewhere the Office of Australian Information Commissioner lists one of its three primary functions as 'government information policy'.

I believe NAA's role should be clarified in legislation, AAOs and ministerial statements. NAA told the Morton inquiry that it "had recently undertaken an extensive review of its own legislation to determine how it could better align with 'the digital age and contemporary records and information management requirements`". Note, records *and* information. Either NAA's role should be restated as one focussed on Commonwealth records, or its mission creep endorsed, and its name, functions, powers and budget expanded accordingly. I would have thought that being the Commonwealth's lead recordkeeping agency was challenging enough … not least preserving, controlling and making records available.

Examination for public access

A challenge known since 1973 but never properly met
The Archives Bill which belatedly became law in 1983 was a remarkable achievement in some ways, not least because of its public access provisions, and despite the strong concerns of some large and influential agencies. Dr Jim Stokes' mid-90s commentary on the first decade of their application remains insightful: "there has been a record of innovation and achievement that has given Australia one of the most liberal and accountable national archival access regimes in the world" (*The Records Continuum*, Ancora 1994, p 49). Five years later the Australian Law Reform Commission report noted that the "most significant change brought to the access process by the Act was the establishment of a statutory appeal system" (3.42).

Nevertheless, the ALRC offered almost 50 recommendations alone relating to public and other access. And Stokes, who was Australian Archives' first Director, Access had also conceded that "Access has tended to be the *enfant terrible* of the Australian Archives, so that the very word has frequently been found in conjunction with negative words like 'backlogs' and 'problems`". It goes back even further.

In the early 1970s the Canadian national archivist Dr W. Kaye Lamb was invited to survey our archival arrangements, and to made recommendations on, inter alia, "Access to public records over 30 years old". His September 1973 report famously observed:

> I have been greatly concerned at the criticisms of the services provided by the Archives Office that I have met on almost every hand. The Office is highly unpopular, especially in academic circles. This is due in great part to the difficulties experienced by researchers in securing access to public records in the keeping of the Archives.

Rarely quoted is what Lamb immediately added: "For many of these difficulties the Archives Office is not itself to blame, for the Government (probably unwittingly) imposed upon it a virtually impossible task" (p 22).

Repeated admissions of failure
For decades, NAA has cleared to its great credit large quantities of records anticipating

proactively, and in response to, public requests and media and academic interest. But the observations made last century remain relevant in the 21st century, its challenges acerbated by factors including: (i) cost pressures from the so-called efficiency dividend (including the cost of defending appealed decisions and of undertaking folio-by-folio examination), and (ii) heightened awareness of the need for care in dealing with requests to see materials with likely national security, defence and international relations sensitivities. The latter of course usually requires referral to local and overseas agencies which can take years and naturally causes researcher frustration.

The Archives has never completely managed to deal with the causes of that frustration. A survey of recent NAA annual reports (and its submission to the Morton inquiry) shows repeated admissions of failure to meet deadlines and repeated attempts to find a silver bullet:

- 2002-3: one of many years in which the 14-day threshold for public requested internal reconsideration of access denial was not met for most requests: (2002-3, 62%; 2001-2, 86%);
- 2003-4: one of many years when so-called streamlined methods were successfully applied, such as dealing with entire series of records based on sampling, especially where Archives' judges there is little likelihood of exempt information in records;
- 2005-6: one of many years when NAA conceded that response times longer than the statutory requirement were generally caused by the need to refer records to agencies and/or to overseas governments for advice, or because the records were not in the Archives' custody;
- 2006-7: this year, in addition to the two main causes noted above, NAA observed that "In some years there is simply a large number of requests involving records about sensitive issues";
- 2007-8: finally, NAA signs section 35 arrangements with ASIS and ASIO (ie established procedures for the identification of exempt records);
- 2008-9: alarmed by the risk of inadvertent release of exempt information retaining ongoing national security, defence or international relations sensitivities, the NAA commissioned an external review and, as a result of it and a previously commissioned review:
  -reviewed its access examination processes and procedures and develop whole-of-government access examination processes and adopted by all departments and agencies engaged in access examination, and
  -allocated $1.2m to establish of a business unit dedicated to the access examination function, established 5 new access examination positions, constructed a secure area for clearance staff, and installed a dual-site local area network for staff to process highly classified and sensitive information in a secure environment;
- 2010-11: another year when NAA conceded that where consultation with Australian or foreign government agencies was required, internal reconsiderations "are rarely achieved within the 14-day statutory period";
- 2011-12: this admission is again made, with the rider "However, the Archives is investigating cross-agency arrangements to improve turnaround times";

- 2013-14: the existence of a backlog of approximately 20,000 applications for access is mentioned, as are steps to address it including resources and consultation and *an access examination taskforce*;
- 2014-15: again, "Significant resources were committed to continue to address a backlog…";
- 2015-16: yet again, "significant resources were committed to address a backlog…";
- 2016-17: the Director-General reported that "In this last year, I commissioned Paul O'Sullivan AO CNZM to undertake a review into the Archives' access examination process", its key points and a reference group noted, the expectation being "a more sustainable model for the release of records into the future";
- 2018 submission to the Morton inquiry mentions planned Archives Act amendments to change various access processing rules (pp 30-31).

An insoluble problem?

In its submission to the 2018 Morton inquiry, the NAA said it was "often [!] unable to meet its own statutory timeframe for requests for records, particularly with respect to the examination and release of previously classified documentation". Its answer in part has now been to have its legislation amended, the stated reason being primarily to "appropriately manage requests for records from high-volume applicants" but also, when one reads the latest version of the Act, slightly move the (statutory response timeframe) goalposts in its favour.

What seems not to have been addressed is the time Australian and overseas defence security and foreign affairs agencies take to advise NAA about any continuing sensitivities. Last year, in *Inside Story*, Tim Sherratt reported that files "withheld pending advice" on average took 3 years 77 days to be resolved, the worst cases over 7 yrs. Just how urgently agencies in Canberra or, say, Washington treat requests for advice, or indeed reminders to get on with it, from an small agency like NAA has never been revealed, but we can guess. The embarrassment at not meeting response deadlines is endured, as must be the brand damage noted by eminent historians to the Morton inquiry, and in its report to Parliament.

Since Dr Lamb visited 46 years ago, nothing truly effective has worked. One must assume neither has direct face-to-face appeal from the NAA D-G to the relevant departmental secretaries nor similar pleas by the relevant Minister nor the Advisory Council. NAA is unlikely to be properly funded any time soon – it is not the War Memorial, after all. I suggest:

(i) all the 1998 ALRC access recommendations be considered afresh,
(ii) proactive examination cease to free up resources,
(iii) "Special access" be used as an alternative to waiting years to receive agency and foreign government advice and the regulations relaxed to facilitate this,
(iv) full details of all "withheld pending advice" requests for records in the open period still not dealt with after 1 yr. be required to be reported annually to Parliament, and
(v) all "withheld pending advice" requests for records in the open period still not dealt with after 3 years be deemed to be open.