

*'Burnt files, lost files and denial of public access: censoring archives and the falsification of history'*

*'It is a truism, perhaps, that the importance of an historical event lies not in what happened but in what later generations believe to have happened'* [Gough Whitlam 1973]<sup>1</sup>

I would like to begin by acknowledging that we are meeting tonight on the unceded lands of the Ngunnawal people, and to pay my respects to Elders past and present. I acknowledge and extend my respect also, to Elders of other Indigenous communities who are here tonight.

Thank you to the Friends of the National Film & Sound Archive, and to its President Dr Ray Edmondson, for inviting me to give this year's Rod Wallace memorial lecture. It is a great honour indeed to reflect tonight on matters close to the heart of the man who did so much to bring this great collection here at the NFSA, and the National Film & Sound Archive itself, into being. We owe an immense debt of gratitude to Rod Wallace for his determination in building this truly national collection.

Rod Wallace spent decades on this remarkable quest - retrieving silent movies, disintegrating nitrate films, boxes of old film reels on their way to the tip, scouring backyard sheds around Australia - to find and preserve our audio-visual heritage that would otherwise have been irretrievably lost.

In 1976, the *Sydney Sun-Herald*, reported on this great search to find and preserve early Australian films, and described Rod Wallace as '*a great Australian sleuth... his mild-mannered, pinstriped appearance conceal a modern-day Sherlock Holmes whose working life has been dedicated to*

tracking down Australia's film heritage'.<sup>2</sup> And he did so, as Ray Edmondson has just indicated, in the face of what might, politely be termed, significant organisational resistance and bureaucratic disinterest from within the National Library where the film unit was initially housed. His efforts were ultimately, and rightly, recognised with the opening in 1984 of the stand-alone National Film & Sound Archive under the Hawke government, that we have the great benefit of today.

And I would also like particularly to welcome members of Rod Wallace's family.

As with so many archival stories, this is also a story of loss and absence – of the missing, lost, and destroyed films, in particular the films of the 1930s and 1940s, and the entire works of earlier directors Franklyn Barrett and Beaumont Smith for instance. However, that so much has survived, preserved for us and for our history, is due to the extraordinary dedication of Rod Wallace and those who worked with him.

I acknowledge also the work of Dr Ray Edmondson, both as the stalwart founder of the Friends of the NFSA and as Rod Wallace's great supporter and co-worker, some might say his co-conspirator, in building the film and sound archive collection from its inception. Ray Edmondson succeeded Rod Wallace as head of the National Library's Film Division, and in 2001 was made the NFSA's first Curator Emeritus.

Now, Ray has also written a highly entertaining book about this time, with Rod Wallace, rescuing long forgotten Australian films, which seemed to

consist of a series of daring 'heists' as Ray calls them, meticulously planned and executed by the 'mild-mannered, pin-striped, sleuth', Rod Wallace.

A major part of the NFSA's collection, the work of renowned Australian director and entrepreneur, Ken G. Hall, is the result of 'the great Cine-sound heist', carried out by Rod Wallace in the late 1950s. As Ray describes, the entire Cine-sound output from 1931-1946, 15 years of film and newsreel production, much of it directed by Ken G. Hall, was saved from destruction in Sydney, bundled into the back of a truck and sent to the National Library's film unit. They are today among the NFSA's most important holdings of early Australian films, together with Hall's 1942 Oscar for *Kokoda Front Line!*.

Archives have been fundamental to my work over the last 20 years as a biographer and political historian. From large national holdings like this one, to private papers, prisoner records, personal interviews, military records, and local historical societies - these collections have played a central role in bringing to life the story of former Prime Minister Gough Whitlam, and the 1975 dismissal of his government by the governor-general, Sir John Kerr. Kerr's dismissal of Whitlam, without warning, on 11 November 1975 just as the Prime Minister was to call a half-Senate election, was recently described by Federal Court justice John Griffiths, as 'one of the most controversial and tumultuous events in the modern history of the nation'.<sup>3</sup>

This political tumult is reflected in the NFSA's large holdings on both Whitlam and the dismissal. There are over 2,108 items in the collection

relating to Whitlam, vastly more than any other politician from that time. On Kerr's appointed, replacement Prime Minister, Malcolm Fraser, for instance there are 695 items, despite his longer period in office. And for Sir John Kerr, even less.

It was Cine-sound's Ken G. Hall who gave Gough Whitlam his first foray into cinema, as a tuxedo-wearing extra in the 1938 feature *Broken Melody*.

### **PPT 1**

#### **GO TO STILL:**

Titled: 'couples, well dressed, seated at table', and in this generic nightclub scene Whitlam is indeed well-dressed and seated, which was all he had to do.

### **PPT 2**

#### **GO TO STILL:**

Launching Hall's autobiography, *Directed by, Ken G. Hall*, nearly 40 years later, Whitlam said he had been chosen as an extra not for his acting prowess, but purely because he owned a dinner jacket.

He said; 'I was one of the few extras available who possessed a dinner jacket and black tie - garments which have never found favour with the fundamentalists of the Labor Party'.<sup>4</sup>

### **PPT 3**

#### **Whitlam as Chamberlain**

From there Whitlam segued onto the stage, making his first appearance as Prime Minister in 1940 playing British Prime Minister, Neville Chamberlain, in Sydney University's Saint Paul's College Revue. It might have been something of a portent to know that, in between the rehearsal and the opening night, Prime Minister Chamberlain lost office.

This is a newspaper clipping from another important, and really quite remarkable archive – a series of letters between Gough Whitlam and his parents, from the time he left Canberra in 1935 to study at Sydney University, and continuing for the next decade. These letters are an invaluable historical archive, giving a rare personal window onto daily student life and the rigours of war-time service. They include Whitlam's training as an air force navigator, his marriage to Margaret Dovey, his four years' active service in the Pacific stationed at Cooktown, Gove and Yirrkala, and campaigning, unsuccessfully, for the 1944 referendum on post-war reconstruction.

We are indebted to Gough's sister, Freda Whitlam, for having the foresight to preserve this collection, and to make them publicly accessible through the National Library.

This is also a good example of how the provenance of an archive can tell a story in itself.

#### **PPT: 4**

#### **Whitlam kissed by Dame Edna**

Whitlam also featured in a well-known, memorable, moment in the Barry Humphrey's 1974 classic *Barry McKenzie Holds his Own* in which he knighted Edna Everage – which, as he said, was 'the only imperial honour conferred under my government'. Whitlam later said that he should have been given a scripting credit for that scene, 'I actually embellished the script by exhorting Edna Everage: 'Arise, Dame Edna'.<sup>5</sup>

And this image is from the NFSA's collection of publicity materials from *Barry McKenzie Holds his Own*.

But the earliest audio archive of Whitlam, is a quirky sound bite, 75 years old, from the National Archives of Australia, of the future Prime Minister appearing on the hugely popular National Quiz Championship in 1948, which was broadcast live by ABC radio.

## **PPT: 5**

### **Quiz Champion 1948 sound bite**

Whitlam went on to win the National Quiz Championship that year, which he did again in 1949, and was runner-up in 1950.

The National Quiz championship was designed to promote interest in the Chifley government's security loans for post-war reconstruction, and Chifley himself was an avid follower. So, this is not just a piece of historical ephemera, it is an important marker in Whitlam's developing public and political profile.

These snapshots from the National Film and Sound Archive, the National Archives, the National Library, and a host of other local and less well-known archives, some of which you will have seen on the loop playing as we entered, reveal a rich personal and political history of Whitlam and the dismissal. The critical point here, is that the insights these various archives bring to our knowledge and understanding, and ultimately to our history, are available to us *because they are open for public access*.

In his inaugural Rod Wallace lecture last year, Kim Williams AM spoke eloquently of Rod Wallace's legacy with the NFSA as the pre-eminent 'memory' institution, dedicated to moving image and sound; and I commend Kim's fine lecture to you. What I want to focus on today is the other side to Rod Wallace's commitment to the acquisition, conservation, and preservation of our film and sound history, and that is his commitment to **public access** – the importance not only of building a comprehensive collection, but of bringing it into the public arena, as a shared history. And the key to that, is *public access*.<sup>6</sup>

UNESCO's Universal Declaration on Archives; adopted in 2011, recognises open access as central to the archival endeavour. It reads: 'Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life'. The appointment by the Whitlam government in 1975 of Professor Robert Neale as the inaugural Director-General of the Australian Archives, the forerunner to the National Archives, cemented the commitment to public access as integral to archival practice. Professor Neale was a

respected historian, committed to the facilitation of historical research, grounded in the presumption of public access to its records.

This presumption of access was given legislative expression in the 1983 *Archives Act* which provided for records to enter the public access period after 30 years, now 20 years, *unless strictly defined criteria for exemption were met*. The default position was of open access after 20 years, and making archives 'available for public access' was one of the listed objectives of the Act. This presumption of open access has been seriously undermined in recent years by excessive delays, denials, and redactions, to the point where we might validly ask whether it still prevails at all.

Restrictions on access can take many forms, of which a simple denial of access is only the most obvious. Access is also denied through the destruction of files, the loss of files, redactions of publicly released documents, revenue raising through a pricing regime for access, and the failure to respond to requests for access, sometimes for years at a time. These restrictions have a profound impact on our capacity as historians to write a complete, unexpurgated, history.

A recent addition to the panoply of restrictions on access that I will speak to later tonight, is the imposition of controls - not on the archives themselves, but on the researchers seeking to access them. This constraint on the capacity of historians to access documents that, although in the open access period are yet to be opened by the Archives, effectively to conduct original archival research, is deeply concerning.



Finally, I hope that what I say tonight will be taken in the spirit in which it is given, 'from the position of what I take to be our shared love of history', and of the archives that both hold it and reveal it to us. Because ultimately, this is a paean to archives, a recognition of their singular importance in our on-going tussle with history, enabled by the critical element of public access.

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How do we write history when evidence central to it has been destroyed, concealed, or even confected? Harvard Professor Caroline Elkins author of *Britain's Gulag*, a searing account of British atrocities in Kenya, posed this question in relation to the disappearance, destruction, and rewriting, of thousands of colonial archives evidencing that end of empire horror story.<sup>7</sup> Elkins's research, and interviews with survivors of the torture, massacres, and detention camps in Kenya, was central to a successful legal challenge later taken by five elderly Mau Mau detention camp survivors against the British government.<sup>8</sup>

Most shocking for historians in that imperial 'confabulation' of history as Elkins calls it, was that an entire set of colonial archives had been removed from Kenya, prior to independence, and sent to England. They were lodged, not in the National Archives with other official records, but in the defence establishment's Hanslope Park, and held in the strictest secrecy. Thousands more files were destroyed in Kenya, in an immense incendiary censorship of history. The residual Kenyan archives were not only comprehensively culled and redacted, they also included, as Bernard

Porter describes, ‘forged innocuous replacements, called “legacy materials”’, forming a false trail of British activities in the lead up to independence.<sup>9</sup>

The legal action by Mau Mau detention camp survivors succeeded in 2012, leading to the reluctant acknowledgement by the British government of those atrocities, the payment of £20m compensation, and the release of more than *1,500 secret files*. This huge influx of historical records precipitated a profound recalibration of 20<sup>th</sup> century imperial history. From the preferred narrative of an orderly, benign, end of Empire transition, ‘from empire into Commonwealth’, to one acknowledging the violence, dispossession, and disorder at the heart of decolonisation.<sup>10</sup>

The fundamental issues this dark episode raises - of archival secrecy and destruction, of the denial of access, and the resultant distortions of history - are by no means isolated to this most conspicuous, and egregious, example.

For several years the British historian, Dr Andrew Lownie, has sought access to the diaries and letters of Lord Louis Mountbatten, close relation of both the late Prince Philip and Queen Elizabeth, and our current King - Charles III’s – great mentor. The Mountbatten papers, which include the equally significant correspondence of Lady Edwina Mountbatten, are held at Southampton University, which had bought the entire Archive for £2.8 million in 2010 using public funds, and promising to ‘ensure public access’ to them. A decade later, most of the papers and all the diaries

remained closed, despite Lownie's repeated requests for access, and an Order from the UK's Information Commissioner to release them.

After 5 years of legal wrangling, it was only when 22 MPs tabled a motion in the House of Commons calling for 'their publication [without further obfuscation and delay](#)', the University released many, although not all, of the Mountbattens' letters and diaries. Still closed from public view are crucial documents from one of the most important and contentious times in British imperial history: the 1947 and 1948 diaries covering Mountbatten's term as the last Viceroy of India and the Mountbattens' shared involvements in Independence and partition. The correspondence between Lady Edwina Mountbatten and Indian leader Jawaharlal Nehru remains completely closed.

Dr Lownie has spent over £470,000 of his own money seeking public access to this significant historical archive, which the university's catalogue describes as 'public records', and which and should always have been publicly available. The UK Cabinet office, meanwhile, has spent £180,000 keeping the papers secret, in order 'to protect the royal family'.<sup>11</sup>

Now, somewhere among those voluminous Mountbatten papers are letters between Lord Mountbatten and the governor-general, Sir John Kerr, days after Kerr's dismissal of the Whitlam government. These letters were briefly cited by Mountbatten's authorised biographer Philip Ziegler, which is why we know that, like King Charles, Mountbatten 'much admired' Kerr's 'courageous and constitutionally correct' action in dismissing the government.

Several years ago, I visited Southampton University hoping to see Mountbatten and Kerr's dismissal correspondence. Although Ziegler had had access, I was denied access to any of the diaries or letters from that time. Instead, I was handed some thin, rather desultory files containing a handful of dinner placements, menus, and luncheon invitations to Mountbatten during his visit to Australia the month after the dismissal, to see Sir John Kerr. No diaries, and certainly no letters between Mountbatten and Kerr.<sup>12</sup>

The reluctant, partial, release of the Mountbatten archive, highlights the immense barriers to accessing material relating to royal matters, and the damage to history done by their closure. 'If our history is to be written accurately, [Lownie reflected recently] we will have to have all the records made available .. and *historians should not be penalised for seeking to ensure that happens*'. The problem that Lownie identifies, of Royal control over access to archives, and our history, continues.

Now, as many of you may know, King Charles recently handed the task of culling the late Queen Elizabeth II's vast and immensely significant archives, to her recently retired footman. This long-serving Palace aide, with no training either as historian or archivist, is now entrusted with the momentous task of deciding which of these irreplaceable royal records to destroy, keep secret, or make publicly available, from the Queen's letters, diaries, and official communications.

Whatever remains after this appalling vandalism of our shared constitutional history will be placed in the Royal archives, not in the National Archives, under a [100 year embargo](#) - until the future Monarch grants access, if at all. It is this 'obsession with secrecy', as Professor Phillip Murphy describes it, that routinely keeps royal documents out of

public view. And it does so through the imposition of a claimed 'convention of Royal secrecy'.

Royal secrecy has a profound impact on how we perceive and write about our history. It shields the activities of the monarch and the broader royal family, from the consideration of history, by ensuring their collective absence from the public record; 'the effect being that public knowledge of key constitutional and [political events is limited](#)'. This creates what is inevitably an incomplete and distorted history, in which the Monarch and the royal family feature, if at all, entirely on their own terms. And that is not history at all.<sup>13</sup>

Andrew Lownie's thwarted efforts to access the Mountbatten archive has been described as '[eerily similar](#)' to the 'Palace letters' case which I took, against the National Archives of Australia, to secure public access to the Queen's correspondence with Sir John Kerr, much of it regarding the dismissal of the Whitlam government. And the two cases do have much in common. They intersect in their respective efforts to overturn a denial of public access to archives relating to the royal family, which the archives claimed were 'personal', and which the courts found should be open. And both cases were taken by self-funded litigant historians, facing immense institutional barriers – from the archives, the royal family, government house and the government - to bring those documents into the public arena.

***This is profoundly wrong. It should not be for individual historians to undertake onerous legal action, simply to ensure that major archival repositories actually release historical documents when required to do so.***

The Palace letters case was one of two major shifts in our knowledge and understanding of the dismissal, both of which correlated with the release

for *public access* of significant new archival material. The first of these came with the revelation in 2012 of the role of High Court justice, Sir Anthony Mason. Kerr's 14 page record detailing Mason's long-standing involvement, over many months, is as startling today as when I first read it more than a decade ago.

Mason was Kerr's secret confidante and guide, playing what Kerr described as a 'critical part in my thinking' and 'fortifying me for the action I was to take'. It stretched back to March 1975, 7 months before supply was blocked in the Senate, when Mason organised secret meetings for Kerr with select senior staff at the ANU law school, to advise him on the nature and extent of his reserve powers, including the power to sack the government and appoint the opposition in its place.<sup>14</sup>

It was only with my discovery of Kerr's record of these interventions, 37 years later, that Mason's pivotal role in the dismissal became clear. And what is important for this discussion, is that if Kerr's archival record had not been open for public access, Mason's role would still be secret today, *as he had always wanted it to be*. Following this revelation, Mason then released his only public statement, in which he further revealed that he had also written a letter of dismissal for Kerr, several days before Kerr dismissed the government. This was clearly an active role, by a sitting High Court justice, and it had been kept secret for 37 years.

The Melbourne Age concluded that, 'rather than vindicate Kerr's actions, the statement makes plain that the governor-general deceived Mr Whitlam'.<sup>15</sup> Kerr's insistence that he had acted alone, that he had neither

consulted with nor revealed his intentions to others, was now a very different story – one of collusion with others, and deception of the government.

While *The Age* saw the Mason revelation as ‘the **final** piece in the dismissal jigsaw’, it was not. This was the first of two waves of archival revelation buttressing the history of the dismissal – the second being the [release of the Palace letters](#), which once again turned that history on its head. We recognise the dismissal today as a more Byzantine, and calculated action, organised with the ‘fortification’ and ‘advice’, of key individuals at the apex of our system of governance.<sup>16</sup>

As the dismissal passed into history, several key elements in that fractious episode remained unknown, yet to be revealed by archival discoveries, and the historical narrative took shape around that fundamental distortion of incomplete knowledge. Central to this, was the view that neither the Queen, nor the Palace more broadly, was involved in Kerr’s decision; that Kerr protected the Queen by maintaining her ignorance of his thinking, and his planning, as he moved towards dismissing the government.

As the Queen’s then deputy private secretary, Sir William Heseltine claimed, ‘the Palace was in a state of *total ignorance*’. In the tortuous history of the dismissal, the view that the Palace had ‘no part to play’ in Kerr’s decision, was a rare constant. And the absence of publicly accessible documents suggesting otherwise, had cemented that view.

For decades the dismissal history had been constrained by the presumption of 'Royal secrecy' in archival practice, which denied us access to Kerr's correspondence with the Queen, her private secretary, Sir Martin Charteris, and Prince Charles, about the use of the reserve powers, the possible dismissal of the government, and Kerr's concern for his own position as governor-general. This presumption of royal secrecy extended even to Kerr's 1978 autobiography, *Matters for Judgement* which, we now know, was vetted by Buckingham Palace prior to publication.

While claiming to present 'the facts', and the 'truth' about the dismissal, Kerr's book did no such thing. The Queen's private secretary had sought and received the draft manuscript, to ensure that Kerr 'omit[ted] any reference' to his 'exchanges' with Sir Martin Charteris, and expressing his 'gratitude' that Kerr had been so 'scrupulous' in doing so. A more overt air-brushing of that particular history is difficult to imagine.

In the UK, the Royal Archives are [part of the royal estate](#), inherited from the Queen 'in right of the crown', and housed in its own round tower at Windsor. It is a *private* archive which exists above the UK's public National Archives at Kew. This duality enables the Royal family to reach into the National Archives and remove from it any material it deems 'personal' to it. Thousands of royal files have been removed from public view in this way, with no right of appeal, denying public access to critical historical documents involving our shared constitutional head of state.

This is quite unlike our single, unitary, system of public archives into which all commonwealth records must, or should, be placed and which affords no privileged status to royal documents. Nevertheless, as the Palace



letters case showed most clearly, the 'convention of royal secrecy' is hardwired into every archival holding across the Commonwealth, and documents relating to the royal family are termed 'personal' and closed to public access.

This creates what Bret Walker SC described to the High Court in the Palace letters case, as an 'antipodean mirror' in our National Archives of the bifurcated system of Royal and public archives in the UK, effectively privileging royal secrecy over public access to royal records as *sui generis* to the vice-regal musings, which our *Archives Act* does not in fact allow.

In relation to 'the Palace letters', it was the use of this powerful label - 'personal' - that had kept the letters secret, under the embargo of the Queen, potentially indefinitely. The label 'personal' also meant that the only way to challenge this royal embargo was not through the usual Administrative Appeals Tribunal, but through a Federal Court action – an onerous path, and one made even more so by the near infallibility of 'royal secrecy'.

Because, here's the thing about royal secrecy, or indeed any secrecy - *it's almost impossible to challenge*, precisely because - *it's secret*. How can a legal case be mounted, arguing for public access to secret documents, when we don't know what's in them, and we can't know what's in them unless the case to open them succeeds? This unbreakable circularity is what makes the term 'personal' such a powerful word in the archival lexicon. And this was how Kerr had labelled his letters to and from the Queen, as they had always been labelled, as 'personal', and therefore, closed to public access.

What was unusual about Kerr's correspondence with the Queen however, and the reason the legal action was possible, is that the usually impenetrable 'convention of royal secrecy' about the letters, had already broken down, through references to them in other documents in Kerr's papers. Kerr referred to his correspondence with the Queen extensively, at times *verbatim*, throughout his papers: including in his handwritten *1980 Journal*, which was particularly revealing; his list of key points on the dismissal which included 'Sir Martin Charteris's advice to me on dismissal'; Kerr's letters to friends describing his correspondence with the Queen; and even extracts from some of the Palace letters, were all in Kerr's papers and, most importantly, they were open for public access.

Every part of this material indicated that the Palace letters were in no way 'personal', and this fragmentary glimpse of the letters was the way into a legal action to release them. Those key documents from Kerr's papers, and others in the UK archives, became the empirical spine of the legal action and were submitted as part of the Evidence Book to the Federal Court and ultimately, the High Court.<sup>17</sup>

So, the opportunity to take the legal action arose through this unique confluence of factors: the identification of key details of the Palace letters from open access material, even as the letters themselves remained secret, together with a legal team willing to work on a *pro bono* basis: Antony Whitlam KC Bret Walker SC, Tom Brennan SC instructed by Corrs Chambers Westgarth. And in 2016, I commenced action in the Federal Court, against the National Archives of Australia, seeking public access to the Palace letters.<sup>18</sup>

Now, when I began the case, I actually had no idea how many letters there were between Kerr and the Queen, such was the level of secrecy about them. I thought, judging from what little we knew of the letters between previous governors-general and the Monarch that there could be, at most, a total of 10 letters each year. So, somewhere in the order of 35 letters in total during Kerr's 3 ½ year tenure. I was absolutely stunned to find out during the case that there were **212** of these letters and over 1,200 pages in total, including Kerr's voluminous attachments.

And I found that out quite unexpectedly – by the simple mechanism of turning on track change on a letter I received from the Archives' legal team. And when I turned on track change, the number of Palace letters, which had been included in an earlier draft, suddenly appeared - 212. Well, as I said, I was absolutely astonished. Kerr's correspondence with the Queen was unlike any vice-regal correspondence before or since. In just three and a half years, Kerr's correspondence comprises as many pages as four governors-general (from Lord Casey to Sir Ninian Stephen) put together.

Buckingham Palace was closely involved in the case from the outset, and argued vehemently against the release of the letters, claiming that their continued secrecy was essential 'to preserve the constitutional position of the Monarch and the Monarchy'.<sup>19</sup>The case did not succeed at the Federal Court and, after a second loss, in a split 2:1 decision of the Full Federal Court, in 2019 I was granted special leave to appeal to the High Court of Australia. The case ended in May 2020, with an emphatic 6:1 ruling by the High Court that the Palace letters are not personal, that they are

Commonwealth records, and therefore come under the *Archives Act* and its open access provisions.<sup>20</sup>

The High Court also issued three cost orders against the National Archives, ordering it to pay my legal costs for all three court hearings. In the end, the Archives had fought against the public release of these immensely significant historical documents, to a cost of almost \$2 million. The Palace letters were released in full in July 2020, and they have changed the history of the dismissal irrevocably.

Two things that are sometimes overlooked in this landmark decision are, firstly, that this is the first and only release of royal correspondence against the express wishes of the reigning Monarch, in any Commonwealth jurisdiction, and an explicit assertion of Australian law over the wishes of the Queen, as the High Court made clear. The Court acknowledged that while its conclusion ‘might run counter ... to the present expectations of Her Majesty about the timing of public access ... the conclusion is the product of the application of the *Archives Act*’.<sup>21</sup> And I must say, that it’s very reassuring to know that in the 21<sup>st</sup> century, Australian law takes precedence over the wishes of the Monarch.

Secondly, the High Court’s ruling was a firm rejection of the putative ‘convention of royal secrecy’ which had been central to the denial of access to the letters. Justice Edelman for instance described the evidence for it as ‘thin’, and that ‘there is "no adequate reason" for the convention proposed’.<sup>22</sup>

Finally, the broader significance of the Palace letters case lies in the precedent it sets for the opening of other royal archives, here and

elsewhere. We have already seen the impact of this broader implication with the release by the National Archives of the Queen's correspondence with *seven other governors-general*, from Lord Casey in 1965 to Peter Hollingworth in 2003.

The breadth of this vice-regal correspondence, spanning nearly 40 years, gives us a unique opportunity to explore the changing nature of the vice-regal relationship and is a far-reaching outcome of the High Court's decision in the Palace letters case.

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With the release of the Palace letters in full, the historical significance of the Queen's correspondence with Kerr in the months leading up to the dismissal is now 'beyond doubt'.<sup>23</sup> The letters constitute an exceptional addition to our understanding of the dismissal, not least for their much anticipated exposure of the nature and extent of the role of the Palace in Kerr's decision to dismiss the government.<sup>24</sup> The involvement of the Queen, Charteris, and Prince Charles in Kerr's decision, from their first discussions in September 1975 about the possible dismissal of the government, and the use of the reserve powers, is impossible to deny.

The letters reveal that involvement and are themselves constitutive of it. As the ABC's Chris Pollard wrote; 'Buckingham Palace gave Sir John Kerr a green light to dismiss the Whitlam government only a week before November 11'.<sup>25</sup>

Former Prime Minister Malcolm Turnbull [concludes](#) that some of Charteris's letters 'can be read as encouraging Kerr' to dismiss Whitlam. How else to read his final two letters before the dismissal assuring Kerr firstly, that the reserve powers existed and were available to him, 'those powers do exist ... that you have the powers is recognised', and this unqualified assertion from the non-lawyer Charteris, was contrary to the advice Kerr had just received from the Australian solicitor-general, Sir Maurice Byers; and in Charteris's final letter to Kerr before the dismissal, the reassurance about the use of those powers; that 'if you do as you will, what the constitution dictates, [you cannot possible \[sic\] do the Monarchy any avoidable harm ... the chances are you will do it good](#)'.<sup>26</sup>

The letters give the lie to the foundational myth of the dismissal as a solo act by the governor-general who 'protected the Queen from getting involved'. The Queen was involved from the time she entered into conversation with Kerr, about the possible use of the reserve powers against the government, months before he did so. As NSW solicitor-general, Michael Sexton KC [described](#); 'Kerr's likely course of action was known to the Palace and so to the Queen, but completely secret from Whitlam and his ministers'. The Palace knew what the Australian Prime Minister did not.

The release of the Palace letters signalled a rare moment of forced archival transparency in the face of determined refusals of access. It was a great victory for history, a highpoint in public access, and the harbinger of a significant recalibration of the dismissal history. The archival journey to secure them however, also revealed a disturbing pattern of destruction and loss of archives, and denials of access, constituting what Anne Gilliland

and Michelle Caswell term ‘the unattainable archive’, known of and yet unknown about, which continue to evade the scrutiny of history.<sup>27</sup>

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### **THE DESTROYED ARCHIVE: *GOUGH WHITLAM’S SECURITY FILE***

Recalling the first of these missing, unattainable archives had me reaching back into the earliest years of this research, nearly twenty years ago, and a chance encounter, or more precisely a lost encounter, with Gough Whitlam’s ASIO file. I had stumbled onto Whitlam’s security file quite unexpectedly through a reference to it in another, unrelated, file.

Obviously, any file maintained by the domestic security service on Gough Whitlam would be a critically important historical record, in itself, and even more so given the Whitlam government’s fractious relationship with the security services.

However, four months later the Archives told me that, having maintained this security file for nearly 40 years, it had been destroyed, just weeks before I requested it. Although ASIO assured me, that according to its records, the now destroyed file ‘contained material of a vetting nature only’, this is impossible to verify and, it’s hardly the point – the historical interest is in the file, whatever it might contain.

What is particularly puzzling about this episode is that, as a former Prime Minister, Whitlam was a recognized ‘[Commonwealth Person](#)’, for the purposes of the Archives’ collection and information management systems. These are ‘*individuals who have had a close association with the*

Commonwealth' and whose records are therefore particularly collected and preserved for history. Nevertheless, the Archives had issued an authorisation for ASIO to destroy Whitlam's security file shortly before I requested it.

The destruction of Whitlam's file not only denies us access to it, its absence feeds needless speculation over its coincident erasure, fuelling an imagined archival content in the absence of fact: was Whitlam's ASIO file just a vetting file; did it identify agents or surveillance methods; would its release have led to the discovery of files on other members of the Whitlam government? This latter is no idle speculation. ASIO had monitored deputy Prime Minister Dr Jim Cairns, whose ASIO 'dossier' was sensationally leaked to *The Bulletin* in 1974, causing immense damage to the Whitlam government and to Cairns personally.<sup>28</sup>

In the absence of Whitlam's security file, the clouded history of the dismissal is only further unsettled.

### **THE LOST ARCHIVE: *GOVERNMENT HOUSE GUEST BOOKS***

Then there are the missing Government House guest books. These provide the details of visits and visitors to Yarralumla, which are of particular interest for the month that supply was blocked in the Senate. When I first sought access to the 1975 guest books, the Archives catalogue listed an unbroken holding from 1953 to February 1996, which I expected therefore would include the 1975 guest books. Apparently, the catalogue was wrong and the guest books in fact appear regularly from July 1961 until Kerr's



appointment as governor-general in July 1974, after which they stop altogether until December 1982.<sup>29</sup>

The National Archives states that the guest books during Kerr's time in office were never transferred from Government House, and Government House states that it has no record of them. And so, an important part of our historical archive has simply disappeared. It should be noted that Government House is required under the *Archives Act* to place the guest books, as Commonwealth records, in the National Archives, as it had done for the previous decade, and which it was the responsibility of the official secretary, Mr David Smith, to deliver.

Government House appears to have had a somewhat cavalier attitude towards its archival responsibilities under David Smith, since these are not the only vice-regal records which disappeared from the care and custody of Government House at that time.

And we come now, to the burnt archive.

#### **THE BURNT ARCHIVE: SIR JOHN KERR'S PROMINENT SUPPORTERS**

In 1978, soon after Kerr left office, a cache of letters which he described as being 'of outstanding value' to him, was accidentally reduced to ashes in the Yarralumla incinerator. The usually punctilious official secretary, David Smith, wrote to Kerr who was then in the south of France writing his memoirs, expressing his dismay at having left this box of such significant letters unattended in the Government House photocopying room. From

there, according to Smith, an over-zealous cleaner had inadvertently thrown the entire contents into the incinerator.

Kerr had sought these congratulatory letters for use in his autobiography. Among them were letters of support from the close royal confidante Lord Louis Mountbatten; the former governor-general and royal relation, Viscount De L'Isle; the governor-general of New Zealand, Sir Denis Blundell; and other prominent individuals supporting Kerr's actions. These names alone indicate that these burnt letters were as important to history as they were to Kerr, and yet the official secretary, who was responsible for their preservation and placement in the Archives, had failed to protect them from incineration.

Were it not for the letters between Smith and Kerr, open in Kerr's archives, detailing the saga of the 'burnt letters', the existence and fate of the governor-general's correspondence with his aristocratic and vice-regal supporters would never have come to light. The letters themselves now never will.

Mountbatten was not alone among Kerr's royal supporters. Letters between then Prince Charles and Kerr, released in 2020 following the High Court's decision in the Palace letters case, show that our King, Charles III, also supported Kerr's dismissal of Whitlam; 'What you did ... was right and the courageous thing to do', he wrote to Kerr shortly after.

It's little wonder that Kerr confidently told the South Australian lieutenant-governor, Sir Walter Crocker, 'I never had any doubt as to what the Palace's attitude was on this important point'.

A final lost and 'unattainable archive' among Kerr's papers that I'll mention tonight, is a file with the intriguing description, 'contents of a light brown case'. Unlike the other missing files this one does exist, and was duly delivered to me in the Archives reading room. It contained a single manilla folder, marked 'contents of a light brown case', which I opened to find – was completely empty.

\* \* \* \* \*

The loss and destruction of files is a potent means of denial of public access – a denial without reason and impossible to rectify. Far more prevalent and no less severe for researchers and for history, is the Archives' [failure to deal](#) with routine requests for access to its records. The greatest concern for scholars, which formed a consistent thread through the many submissions to the 2020 [Tune review](#) into the National Archives, is the lengthy delay in dealing with requests to access files.<sup>30</sup>

As of August 2021, there was a backlog of over 20,000 unanswered requests for access, more than half of which had been submitted *between five and 10 years* earlier. Of those, 256 applications were more than a decade old. The [Tune review](#) reflected the frustrations over these delays expressed in numerous submissions from historians and others, in its findings that Archives had 'struggled to fulfil its mandate', 'is failing to

deliver' in its response to access requests, and was potentially even in breach of its own Act.

As Senator Rex Patrick told Senate estimates in 2021: 'These chronic delays have had a severe impact on historical research and the understanding of our nation's past .. Numerous research projects have been abandoned because of the failure of the archives to provide timely access'.

### ***Shifting restrictions from the Archival record to the researcher***

As if this were not troubling enough, add to this the powerful amendment to the *Archives Act* introduced by the Morrison government in 2018, which, for the first time, placed restrictions on researchers' requests to access documents. This was done through the imposition of a 'cap' on the number of requests for access to documents that are already in the open access period, and have not yet been opened by the Archives. The 'cap' or limit is set at just 25 requests, which Archives considers a 'high volume' of requests, and which is in fact, a completely unworkable, minuscule, number for sustained original research.

The 'cap' introduces a new element in the plethora of restrictions on public access, by focusing not on the records to be released but on the researcher requesting them. I know this, because I'm one of them.

After years of sustained research in the archives, I was shocked to receive an automated email from the Archives, earlier this year, telling me that I had exceeded the limit of 25 requests for access, and this meant that I had therefore entered a Kafkaesque archival limbo, known as '*the consideration period*'. And if you're a researcher then, believe me, this is somewhere you do not want to be.

The 'consideration period' upends the principle of equitable open access by increasing the length of time the Archives can take to deal with access requests, beyond the statutory 90 days, once those requests exceed 25 - and how that number was arrived at is not clear. As a result of this cap of 25, of which I received no warning, *all* my requests made in the last 8 months, have now been pushed back to late 2024 which, with a book contract waiting to be completed at the same time, makes my work simply impossible.

There's a singular incongruity in this restriction on researchers existing alongside the Archives well documented failure to deal meet its own 90-day timeline for dealing with requests. I currently have 33 outstanding access requests with the Archives dating back many years, *6 of which I applied for more than 12 years ago*. I've written three books in that time, and I'm still waiting for a decision on access to documents that were intended for inclusion in them. And my experience is, regrettably, by no means unique.

Even worse, because of the 'cap', if I request any further archives to be opened, which is of course the essence of my work, then the time the Archives can take to process *all my* existing requests will be extended even further - another 6 months here, an extra year there - until I agree to cancel my requests, limit my research, or abandon it altogether. This is not only a dire impediment to original research into our own history, it fundamentally misunderstands the nature of original archival research.

Most troubling in this new restriction of 25 access requests, is that it appears to be in breach of the Archives' own Act. Tom Brennan SC, who

appeared for me in the Palace letters legal action, notes that the *Act* 'does not permit automatic extensions' of the time period within which the Archives must deal with requests for access. The use of an *automated* extension mechanism precludes any consideration of the Objects of the Act in reaching that decision, one of which is 'to make [archives] publicly available'.<sup>31</sup> There is a troubling legal question-mark therefore, over this automatic, robo-extension, of delays in access.

Let's look at what this means in practice. Take Sir John Kerr's papers, a vast and extraordinarily important holding. There are over a thousand individual records in Kerr's papers and, when I first began examining them nearly 20 years ago, very few of them had been opened. With the great assistance of dedicated staff at the Archives, for whom I have nothing but the greatest respect and gratitude, I accessed hundreds of Kerr's files, never knowing which ones might be significant precisely because they were not yet open, and very little was known about them other than their title.

If the 'cap' of 25 access requests had existed at that time, the extensive exploration of hundreds of records from Kerr's papers would never have been possible. Those revelations, which were not only immensely important in themselves – Kerr's *Journal*, his notes on his discussions with the Palace, and of the role of justice Mason, the vetting of Kerr's memoirs, for example - but which also fed into the Palace letters legal action, would still be unknown today.

The reappraisal of the history of the dismissal over the last decade, has been possible only because of *public access* to the archives that revealed

it. If those archives had remained closed, as they had been for decades, the history of the dismissal would have stalled with them – incomplete, inaccurate, and unchanged from 1975. The continued closure of records, many decades after their creation, diminishes historical inquiry and is entirely antithetical to the core functions of the National Archives; ‘to collect, manage and *make public*’, Australia’s most significant historical records.

I urge the Minister, Tony Burke, to end this formidable barrier to original historical research into documents held in our own national archives, and restore the principle of equitable public access at its heart.

There can be no historical reckoning without access to the documents that would tell it to us.

<sup>1</sup> The Hon EG Whitlam Speech by the Prime Minister at the unveiling of the Eureka flag Ballarat Fine Art Gallery 3 December 1973 Whitlam Institute PM Collection

<sup>2</sup> Nancy Berryman *Sun-Herald* on 19 September 1976

<sup>3</sup> *Hocking v Director-General of National Archives of Australia* [2018] FCA 340

<sup>4</sup> Gough Whitlam ‘Notes for the launching of Ken hall’s autobiography *Directed by Ken G. Hall*’. Sydney. 28 June 1977

<sup>5</sup> Gough Whitlam ‘Australian Film, Television and Radio School’ *Variety* 12 October 1988

<sup>6</sup> Jenny Hocking ‘Archival secrets and hidden histories: Reasserting the right to public access’ *Griffith Review 67: Matters of Trust* February 2020

<sup>7</sup> Elkins, Caroline ‘Looking beyond Mau Mau: Archiving violence in the era of decolonization’ *American Historical Review* June 2015 pp: 852-868 fn4 p: 853

<sup>8</sup> Caroline Elkins *Imperial Reckoning: The Untold Story of Britain’s Gulag in Kenya* (Henry Holt and Company. NY. 2015)

<sup>9</sup> David M. Anderson 'Guilty secrets: deceit, denial and the discovery of Kenya's "migrated archive"' *History Workshop Journal* 80 2015 Pp. 142-160 p. 142; Bernard Porter 'Quiet sinners' *London Review of Books* Vol 35 No. 6 21 March 2021

<sup>10</sup> Elkins and fellow historians Huw Bennett and David M. Anderson appeared as expert witnesses in this case. Their evidence of the existence of these files forced the FCO, after first denying to the Court their existence, to finally concede their creation and retention at Hanslope Park. See Elkins, Caroline 'Looking beyond Mau Mau: Archiving violence in the era of decolonization' *American Historical Review* June 2015 pp: 852-868; David M. Anderson 'Guilty secrets: deceit, denial and the discovery of Kenya's 'migrated archive' *History Workshop Journal* 80 2015 Pp. 142-160; Joy Nyokabi 'Silencing Kenyan history: Operation legacy and the 'migrated archives' *Democracy in Africa* January 2023; Livsey, Tim 'Open secrets: the British 'migrated archives colonial history and postcolonial history' *History Workshop Journal* 93 2022 Pp. 95-116

<sup>11</sup> Andrew Lownie 'Censoring our history' *Transactions of the Royal Historical Society* November 2023 pp: 1-11; Victoria Ward 'Cabinet Office spent £180,000 of taxpayer cash to keep Mountbatten's diaries secret' *The Telegraph* 23 July 2023; Naomi Canton 'UK university holds Nehru-Edwina letters, doesn't own them' *Times of India* 30 April 2022

<sup>12</sup> Details in possession of the author.

<sup>13</sup> Iain McLean, Scot Peterson, and Richard Reid 'Royal archives that we pay for but aren't allowed to read' *LSE British Politics and Policy* May 2021

<sup>14</sup> Hocking, J. *Gough Whitlam: His Time* (Melbourne University Publishing. Carlton. 2012);

<sup>15</sup> Michael Gordon 'Whitlam should have had warning, says Kerr adviser' *The Age* 27 August 2012

<sup>16</sup> See Kerr's description of Sir Anthony Mason 'fortifying' him for his action in Kerr, J. 'Rolling conversation with Sir Anthony Mason'; 'Sir Martin Charteris's advice to me on dismissal' in Hocking, J. *Gough Whitlam: His Time* (Melbourne University Publishing. Carlton. 2012); Malcolm Turnbull 'Foreword' in Hocking, Jenny *The Palace Letters: The Queen, the Governor General and the Plot to Dismiss Gough Whitlam* (Scribe Publishing. Melbourne. 2020.)

<sup>17</sup> J Hocking, *The Dismissal Dossier: Everything You Were Never Meant to Know about November 1975*, Melbourne University Publishing, Carlton, Vic, 2015.

<sup>18</sup> Jenny Hocking *The Palace Letters: The Queen, the Governor General and the Plot to Dismiss Gough Whitlam* (Scribe Publishing. Melbourne. 2020.)

<sup>19</sup> M Fraser, Official Secretary to the Governor-General, 'Submission 3 February 2017', copy with the author.

<sup>20</sup> *Hocking v Director-General National Archives of Australia* HCA Case S262/2019 2020

<sup>21</sup> *Hocking* HC, above note 1, [122].

<sup>22</sup> *Hocking* HC, above note 1, [260]

<sup>23</sup> Phillip Murphy

<sup>24</sup> Iain McLean, Scot Peterson, and Richard Reid 'Royal archives that we pay for but aren't allowed to read' *LSE British Politics and Policy* May 2021



<sup>25</sup> Christopher Pollard 'The facts of the Whitlam dismissal are more important than ever' ABC 11 November 2015 <https://www.abc.net.au/news/2017-11-11/whitlam-dismissal-five-facts-you-need-to-know/9133768>

<sup>26</sup> Sir Martin Charteris to Kerr, 4 and 5 November 1975

<sup>27</sup> 'Records and their imaginaries: imagining the impossible, making possible the imagined' March 2016 [Archives and Museum Informatics](#) 16(1)

<sup>28</sup> Peter Samuels 'Cairns: ASIO's startling dossier' *The Bulletin* 22 June 1974 p. 11

<sup>29</sup> *Government House Guest Books* NAA A10925

<sup>30</sup> For example, submissions to the Tune Review by [Professor Anne Twomey](#), [Tim Sherratt](#), [Academy of the Social Sciences in Australia](#)

<sup>31</sup> Archives Act 2A(a)(ii)