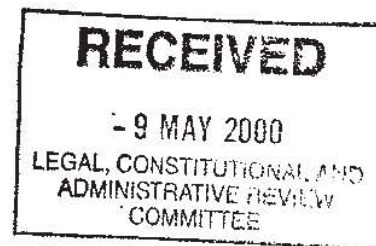


Submission No 164
Spec 14



9 May 2000

Submission to the Legal, Constitutional and Administrative Review Committee,
Legislative Assembly of Queensland

From: Associate Professor Richard Fotheringham, Head, Department of English
The University of Queensland

Re: Review of the *Freedom of Information Act 1992* (Qld)

Preamble

I was one of the first applicants under the FOI (Qld) Act of 1992 (Application S 75 of 1993, Decision No. 95024). I requested and was refused Queensland Health Department records relating to the institutionalisation of Violet Christina Brodie (1868-1952), the wife of the celebrated Queensland short-story writer Arthur Hocoy Davis ("Steele Rudd", 1868-1935). Mrs Davis suffered a nervous collapse of some kind in 1919 and lived in Queensland mental health institutions from then until her death in 1952.

I sought the information in relation to my biography *In Search of Steele Rudd* (University of Queensland Press, 1995). I wished to know the medical diagnosis of Mrs Davis's illness, the date of admission, and any details of her treatment and life while institutionalised. This was intended to assist me in determining whether, as some family members claimed, her husband's behaviour had contributed significantly to her collapse. I also wanted to pay tribute to her as an individual and not simply deal with her as incidental to "Steele Rudd's" career.

I specifically address below the procedures followed by first Queensland Health and then the Information Commissioner in relation to my application under the FOI Act.

In addition, I have been a 'client' of research libraries and archives for more than 20 years, including internationally the British Library, Public Records Office and Maritime Museum (London), the Library of Congress (Washington), the New York Public Library and the New Zealand National Archives. Nationally I am a regular user of the National Library of Australia, the National Archives of Australia, the Mitchell Library (Sydney), the State Archives of NSW, the Public Records Office (Vic), the La Trobe Library (Melbourne), and locally the Fryer Library at the University of Queensland, the John Oxley Library and the Queensland State Archives. I have used all these repositories for academic research relating to work on Australian cultural history, in particular Queensland literary and theatre history.

I am attaching ("A") a copy of a magazine article about one of my research discoveries.

Some of my remarks (particularly under section (4) below) are based on common experiences at many of these libraries and archives.

As you will see from my comments under 3. 1-5 below, I would strongly endorse the proposal by the Legal, Constitutional and Administrative Review Committee in their discussion paper (February 2000) that an independent co-ordinating and monitoring body be established to administer applications under the FOI Act.

Comments in areas requested by the Committee of Review

1. *Whether sufficient information is available to assist applicants to understand the freedom of information (FOI) process.*

Generally I did not have difficulties in this regard. As an experienced researcher, and one who on a regular basis is looking 'objectively' for information from a variety of sources (unlike e.g. an amateur investigator trying to locate government files held on themselves), I have of course built up a reasonable level of expertise over the years in dealing with procedures such as those required under the FOI Act. Compared to some other institutions (e.g. the National Archives) the FOI procedures are relatively straightforward, as they don't require formal previous identification of the material requested or security-access clearance for previously unrequested material. However see my comments below (3.3) for the other side of this

2. *Whether the application and review processes are easy to use*

Again I did not strike problems in this area. However I did seek legal advice in preparing my application. It was my experience that a well-presented and formally prepared submission was a great benefit in getting the application taken seriously, and became absolutely essential at the appeal levels. If nothing else, the FOI officers dealing with my application were being careful to set out their case carefully and formally, recognising that they were dealing with a legally-informed request. Whether that is automatically true of all applications I cannot say.

3. *Any difficulties encountered in your experience with the FOI process / suggestions about how to make the FOI process simpler and more user friendly.*

I encountered a very large number of difficulties. The application and appeal process also took almost three years to arrive at the final decision. My suggestions to solve some the problems follow the elaboration of each.

3.1 Government Departments vary widely in their willingness to grant FOI access.

Some departments have been relatively willing to grant FOI requests; others, particularly Queensland Health, have been most unwilling to grant any requests. It is interesting that most of the information I was seeking I eventually obtained by requesting a copy of divorce papers. (Davis divorced his wife in 1933 on the grounds of incurable insanity.) These were held in the State Archives at Runcorn where they are freely available to any client. Here the assumption seems to be that documents recording legal proceedings, which originally were held in open court, tend to be generally available.

Recommendation: that to enable decisions to be made more quickly, some uniformity be introduced into the proceedings by introducing standard and consistent codified categories of information applicable across all government departments (e.g. that all personal records from all departments of persons deceased more than [65?] years be made available under FOI).

3.2 Inconsistent and sometimes uncodified 'time limitations' cause uncertainty as to whether and when documents should be released.

In assessing my request for the mental health records relating to Mrs Davis, the key question to which the Information Commissioner returned repeatedly in his written reasons for decision, was the length of time which ought to elapse before material relating to a deceased individual, and which that individual might have wished to keep private, ought to be released:

"I accept that the age of documents in issue is a relevant factor. Privacy concerns in respect of deceased persons may lose their potency with the passage of time, such that even sensitive personal information eventually reaches a stage where its primary interest or significance is merely historical."
[Decision 95024 par. 31.]

In spite of my explicit request, both in my written submission and in oral discussions with the Commissioner, no decision was made as to how long the material relating to Mrs Davis should be withheld. She died in 1952 – forty years before my initial request.

In some cases time limits are explicitly set out in legislation and regulation (for example the *Libraries and Archives Regulation 1990* restricts access to public records for 30 years since "last dealing"; 65 years for personal or staff files. In other cases library and archive staff simply work to "rules of thumb"; for example the 'convention' under copyright that material deposited more than 75 years ago, and for which no author can be found, is assumed to be out of copyright. In my experience this convention is often used so that copies can be made available to bona fide researchers (some repositories require researchers to sign a form exempting the repository from liability in the case of subsequent legal action).

Recommendation: that, possibly using the Libraries and Archives Regulation 1990 and other similar previous state and federal legislation/regulation as a guide, the FOI legislation be amended to indicate what time restrictions should apply to categories of material which are not automatically exempt but which because of the likely contents should be kept closed for a period. Again it hoped that such standard classifications will expedite decision making in all but a very small minority of cases. It should also aid in preventing some of the inconsistencies and contradictions that inevitably will arise between FOI legislation and the proposed Privacy legislation.

3.3 No attempt was made to ascertain if all the material covered by my request had been located.

After my initial request had been refused, subsequent material was found by Queensland Health, which fell within the bounds of the original request. It was only my persistence in taking the matter on appeal that brought this fact to light. More than a year later again I myself located further relevant records in the State Archives at Runcorn. I was left with no confidence that any systematic or comprehensive attempt had been made to locate all the likely relevant material.

Recommendation: that FOI officers be required to indicate what steps they have taken to locate all material relevant to an application.

- 3.4 **At the level of the initial request and of first appeal the application was not considered by a neutral umpire, and there was no avenue for further appeal to the judicial system.**

My application was rejected first by an officer within Queensland Health, and the first appeal was also rejected by a more senior officer within that government department. It was only at the third and final stage that the Office of the Information Commissioner became involved. The Commissioner therefore was placed in the difficult situation of being asked to overturn two previous levels of decision making. Perhaps not surprisingly, in spite of his reasons in his written decision, which seemed to endorse throughout the merit and appropriateness of my request, in the final paragraph he declined to allow my appeal. At present there is no possibility of appealing against this decision to the court system.

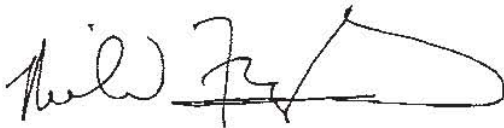
Recommendation: that all FOI requests be considered at all levels by staff not otherwise attached or beholden to the government department from which material is requested, and be open to review by the courts under the Judicial Review Act.

- 3.5 **The time taken from first application to final decision was excessive**

My initial request was made on 27 November 1992. The final written decision was issued on 19 October 1995.

Recommendation: that procedures be streamlined and case management be introduced to ensure that all requests are finalised within six months.

Yours sincerely,



Associate Professor Richard Fotheringham
Head, Department of English
The University of Queensland

A Letter from the Editor

Two great cultural discoveries: in the U.S., the huge hoard of previously unknown Andrew Wyeth paintings of the mysterious Helga (see ART); and in Australia, the exciting find of the long-forgotten copyright collection in the Australian Archives (see SPECIAL REPORT). Entirely by coincidence of history, the main Australian and overseas strands of the magazine this week complement each other beautifully.

One of the first things that Queensland Correspondent Ken Edwards did after he flew to Canberra to prepare this week's cover story on the archives discovery was to fall down some steps (while, he insists, going out for a drink) and break a bone in his right ankle. This proved beneficial because Edwards, a 35-year-old former head of the Manila-based Press Foundation of Asia, had a lot of reading to do. What he discovered was that everyone seems ready to help a man on crutches. So for the next two weeks he remained holed up in a motel room combing copies of the archival material with the collection's finder, Richard Fotheringham, while the capital's hospitable taxi drivers delivered food and ran messages, the motel staff pampered him, and even the local newsagent helped arrange the transmission of material to our Melbourne office. In another coincidence,



Researcher Fotheringham



Correspondent Edwards

Edwards and Fotheringham had actually been at the University of Queensland together—Fotheringham as a lecturer in drama, and Edwards as a journalism tutor and later as journalist-in-residence—but they had not met for some 18 years. That was when Edwards was the best high school friend of Fotheringham's younger brother and Brisbane was much smaller.

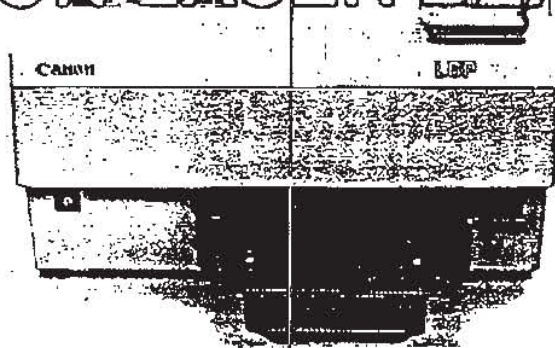
Edwards actually happened on the story while he was researching an article on the university's latest breakthroughs on koala pox, and he taxed the press office to come up with something more interesting. He was told that Fotheringham

had discovered manuscripts of two previously unknown plays by the writer Steele Rudd, *On Budgee Creek* and *The Old Selection*. After finally being tracked down in Canberra, Fotheringham exclaimed to Edwards: "Didn't they tell you about all this other material?" There are 85,000 items, and one of the most important messages of this week's article is that we have barely scratched the surface. But it still makes lovely reading.

Jeff Pemberton

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Special Report

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"THE MAN THEY COULD NOT HANG."
 CAST OF CHARACTERS.

THE MOTHER
 THE FATHER
 THE MAN
 DEAREST
 THE DISTURBER
 THE DEAR OLD FRIEND.

Scene 1
 Scene 2
 Scene 3

Photographs and copyright application from the play *The Man They Could Not Hang*; the number of surviving play texts has been doubled

COVER STORY

Light on a Lost Hoard

Experts acclaim the social and cultural find of the century



Theater and the arts generally is a field that has always been full of old frauds, some of them quite famous people. The more distant in time their jiggery-pokery becomes, the more they are likely to be remembered as gay dogs, and their deceptions as all good clean fun. The sufferings of their victims are long forgotten.

At the turn of the century Steele Rudd (Arthur Hoey Davis, 1868-1935) was one of Australia's foremost writers, but he was thoroughly duded by Bert Bailey, the film and theatrical entrepreneur who made his name playing Dad Rudd of the *Dad and Dave* duo, members of the bush family who were Rudd's most famous characters. Despite the enormous financial success of the stage play of Rudd's first book, *On Our Selection*, Rudd spent his last years

living on a £1-a-week government pension while Bailey grew rich on a staging of the play that gave Rudd no royalties.

The Tait brothers, Charles, John, Nevin, and Frank, were famous as the family that took over and built up J. C. Williamson's theatrical empire, and who, along the way, claimed to be the makers of

Fotheringham: chance and perseverance



the now largely lost 1906 pioneer film, *The Story of the Kelly Gang*. This was the first feature-length movie made in Australia, possibly the world.

Only now, as a tent barker might shout, can it be revealed just how Steele Rudd was done down by Bert Bailey, and how the Kelly film was made, not by the duplicitous Tait's but by a rival entrepreneur, Dan Barry.

These revelations and hundreds of other melodramatic moments are uncovered in what may prove to be the greatest find in Australia's cultural history—85,000 original items covering almost a century of forgotten copyright applications locked in a national archives warehouse in Canberra. Their index—the key to this treasure house of social and cultural history—lay in a cardboard box hidden under a desk in the Patents Office in Woden, a Canberra suburb. The box was even in a section that

dealt not with copyright but with trademarks.

The cache contains previously unknown plays by Rudd and Marcus Clarke, the writer born in London in 1846 whose novel [For the Term of] *His Natural Life* is one of the enduring classics of English literature; the original script of Betty Roland's 1920s drama *The Touch of Silk*; a copy of the play that made J. C. Williamson famous (*Struck Oil*); and a huge unresearched body of material.

The latter includes copies of almost every book, journal, manuscript, sheet music, sporting program, circus and vaudeville act registered under colonial and Commonwealth copyright laws promulgated in the 1870s and in force until the Commonwealth Copyright Office was closed in 1969.

This huge hoard of artistic works was unearthed earlier this year when, through a combination of chance and perseverance, Richard Fotheringham, 39, a Queensland University lecturer in drama, asked an archivist to follow through sequentially on a file number referring to Steele Rudd's *On Our Selection*, which Fotheringham was researching for a doctorate on Australian drama. This was drama itself, because, acting on a hunch, Fotheringham was in effect asking for a file number that was not there. He had noticed that one item from the copyright files that he had been researching carried a copyright number ending with a

A forgotten song: just a small part of the archives memorabilia

stroke and the figure 1. Reasoning that there would be no need for such a classification unless a complementary file existed, he asked the archivist to check whether there was a /2 file.

Fotheringham recalls: "She telephoned me a couple of days later and said, 'Guess what I've found.' It was a complete script of *On Our Selection*."

This first discovery contained the key as to why the vast volume of material had remained hidden. The copyright files were, in fact, in two parts. The first held the application forms, sometimes containing the material over which copyright was sought. This created the illusion that these forms and their scant contents—typically no more than a two-page program or a brief film scenario—represented the whole collection. The truth was that a massive

amount of other, bulkier material that had accompanied the applications had been filed separately—hence the /2 files, stored and long forgotten. "It really began from there," says Fotheringham. "Once we realized what we might be on to, we asked the archive workers to check, and they said: 'Yes, there's about 100 meters of this stuff in a warehouse'."

Federal Arts and Heritage Minister Barry Cohen last week was ecstatic. Cohen said: "This sounds like the most exciting Australian cultural discovery of the century. The implications for the arts as a whole are enormous. Imagine what else might be there. The mind boggles. Clearly, he (Fotheringham) has only scratched the surface. It could be we've struck the mother lode." Cohen said he was staggered that the collection was not known





Arthur Hoey Davis (Arthur Steele Rudd), 1926

about before. He added: "Obviously there's going to have to be the most careful search of the entire copyright collection now we know this material exists."

The find is being acclaimed by literary and arts academics. One of the nation's most prominent stage historians, Eric Irvin, enthused: "It's an incredible discovery—really marvelous. I regard it as one of the most important finds in our history. I do not know of any other bulk collection of theatrical work in any of our libraries."

Said Dr. Harold Love, from the English Department of Melbourne's Monash University and editor of *The Australian Stage: A Documentary History*: "I think this is something really tremendous. Now that a really large collection of manuscripts has turned up, I think it's going to mean a whole new age for Australian drama. We're suddenly discovering a whole past that people didn't realize we had."

Added Margaret O'Hagen, librarian for the University of Queensland's rare books and manuscripts collection: "There is very little material from the 19th century and early this century, so this find helps redress the balance. It is the recovery of some of our lost heritage."

Access to the material is likely to be of help to researchers in dozens of cultural fields, especially Australian social, literary and film history. Says Fotheringham, a former actor and director: "The collection contains everything we could not get from the newspapers of the day and, more importantly, it is source material that is so much more valuable than secondhand accounts. For theater historians it is an absolute joy, particularly for information about the bush, because although you can work out what was going on in the capital cities, we've had no idea of what was happening in the country." The files have already given new insights into the extent of the hero-worship

Special Report

of the Kelly gang in the bush. Fotheringham says: "There was a roaring trade in Kelly plays, details of which we have found for the first time, and which would probably have been banned in the cities." This hero-worship of the gang—which kept northeastern Victoria and southern NSW up in arms from 1878 to the time of its destruction at Glenrowan in June 1880—finally took broad popular form more than a quarter of a century later with the first great feature film effort, the 1906 *The Story of the Kelly Gang*.

Although small pieces of the film were found in canisters under a house in Sydney several years ago, much of its production remains shrouded in mystery. Says Fotheringham: "We knew about it, but what we didn't know was who made it. We think it was about 60 to 80 minutes long—only a little bit has survived—and it is famous for its claim as the world's first feature film."

According to Fotheringham, the Tait brothers claimed to have made the film and developed an elaborate myth about how they had done everything from directing to acting in it. In the newly discovered files however, an entry in the Register of Proprietors of Copyright, dated December 14, 1906, names Dan Barry and Robert Hollyford, an actor in Barry's troupe, as the copyright-holders for "a sheet of letterpress entitled advertisement of the set of moving pictures entitled *The Kelly Gang*." Fotheringham says that the use of advertisements and posters in this way became the normal method of registering copyright for a film in Australia, while in the U.S., for example, copyright offices demanded stills of every frame.

Says Fotheringham: "As a result of this copyright entry, we can now be almost certain that the film was produced by Dan Barry, who was the greatest of the provincial theater company managers, famous throughout outback Australia at the turn

of the century. He had produced all sorts of things, including a Kelly gang play that was the basis of the film. The Tait brothers bought the movie for commercial distribution, but this shows that they did not make it."

The collection contains script outlines for many other films that no longer exist. Meg Labrum, the film and television documentation officer of the National Film and Sound Archives in Canberra, said that from her point of view this was the most significant aspect of the find: "Quite often this material will fill the gap where the film has disappeared. I'm thrilled to bias. It is an extremely significant find."

For Richard Fotheringham, a former Queensland University amateur actor and assistant stage manager for the state theater company, the find is the high point of a path that began seven years ago on a wet mid-winter night in the Victorian provincial city of Ballarat. He and his wife Roslyn had travelled for eight hours in a tired leaking Ford truck for a performance being staged there by the Popular Theater Troupe, an alternative theater group they had formed to play at industrial work-sites, colleges and minimum-security prisons.

Fotheringham had done a master's degree specializing in Elizabethan drama and had studied theater and television production for two years in London. But that night in Ballarat they found themselves sleeping with seven other people in a freezing single room, and when a sleeping bag burst they awoke to find themselves covered with down and dust. Fotheringham turned to his wife and said: "We're too old to be hippies."

With this resolve, a few months later in 1979 he took a job as senior tutor in drama back at his old university. This led to a lectureship and, "still craving the respectability of more academic credentials," the doctorate thesis that this year resulted in six months' sabbatical research in Canberra. Fotheringham has



Bert Bailey (center) as Grandad Rudd with the cast of the Rudd family in 1930

become so caught up in the find that he has now taken a further six months' unpaid leave to continue researching the files while he and his two children live on his wife's income as an associate to the High Court's Justice Brennan.

Fotheringham recalls: "I guessed there was a lot of material in Canberra, because the archives there had not been very well researched, particularly on Australian theater. A few people dropped in and looked really quickly at the available material and went away back to Sydney or Melbourne. But no one was working there all the time—and that was absolutely vital in discovering the collection." As a result of Fotheringham's lucky guess on the sequential numbering, the discovery was made, but obstacles remained. Fotheringham still had to find out what was in the collection and then gain quick access to the material. He assumed indexes must exist, but they, too, seemed to have disappeared. He was sent from building to building, department to department, before tracking them, finally, to the parents' office building.

Although it will take months to glean all the important listings from the index, a quick scan shows the enormous depth of material. There are vaudeville acts, reviews, travelogues, listings for phone books, military records, comic strips, photos, drawings, paintings, sketches, advertising slogans—material touching most aspects of Australian life.

Some of the documents detail the work of one of Australia's most loved figures—Roy Rene (real name Harry Van der Sluis), our greatest comedian. The spindly Rene, who gave us expressions such as "Strike me lucky," and "Give us a go," was famed between the wars as the "Mo" half of the Stiffy and Mo team he forged with Nat Phillips. Rene, constantly comparing himself to Chaplin, used to say "He hasn't got my liv'ly pathos." But Rene's humor, brazen and cocky, touched part of the Australian self-image and



Ned Kelly: archives throw new light on the hero-worship of the Kelly gang

caused one admirer, former NSW Governor Lord Beauchamp, to write: "Your art is an important expression of the Australian ethos." To which Rene replied: "Gorblimey, I hope that's a compliment." The copyright files have preserved some superb examples of Stiffy and Mo's wit. There are five pantomimes, several songs, some vaudeville sketches, and at least one script for the *McCackie Mansions Radio Show*.

Armed with the reference numbers, Fotheringham began the painstaking hunt

through the actual files. At first he was frustrated by regulations. When the Gorton Government decided in 1970 to make archival material available, it was with the proviso that all material should be security-checked before release. "It was a very slow process," says Fotheringham. "Even after you found out something existed, you had to apply for access, then wait up to 90 days while the material was checked. Then you had to put in a further request to get it out of the repository. What's happened now is that I've managed to persuade them that these are very important files, but there's nothing there that's likely to have a D-notice or bring down the government, so they've done a sampling of these very large files, made a report, and agreed to open them all to public access with 24 hours' notice."

Such accessibility will be of enormous help to researchers in dozens of fields, especially social, literary and film history. Many Australian myths were reflected on the early Australian stage and pioneer films. One of the most enduring, the fear of invasion by Asian hordes, was popularized in a rediscovered play by Randolph Bedford, a Queensland parliamentarian and raconteur, the Fred Daly of his time. Fears already existed just before World War I that Australia was going to be invaded by the Japanese, but Bedford crystallized them in a vast 1909 play called *White Australia or the Empty North*. It included a scene of the Japanese fleet in Sydney Harbor being bombed by Australian air-



Dad and Dave come to town: Bart Bailey, Peter Finch and Valerie Scanlon

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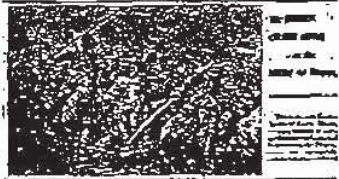
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His Natural Life author, Marcus Clarke

Special Report

ships. "Really, that period and the plays of that period developed the whole paranoia about invasion from the north that is still part of our mythology," says Fotheringham.

"These plays we've found are important in so many ways. We thought we were faced with the almost total disappearance of several vigorous and exciting ages of Australian drama, including significant works written as recently as the 1930s. It is not just stage history that has suffered through the loss of these texts, for the live stage has always reflected contemporary ideas about nationhood, nationalism, Aboriginal people, ethnic minorities, the role of women in Australian society, the Australian identity, war, the bush and the city. A few plays survived in private manuscript collections and are now in public libraries, but they probably did not bring the total number of surviving performed play texts before 1920 to more than 60. Now we've at least doubled that number."

The works cover the great names of Australian theater, film and literature. In addition to most of the plays of Steele Rudd, Louis Stone (the author of *Johan*) and Betty Roland, there are several by each author that were either unknown or thought lost; these are all of Edmund Duggan's and Bert Bailey's individual and joint efforts; most of Kate Howarde's plays, including *Passion Paddock*; scripts by George Wallace, Edward Dyson, William Moose, William Anderson and Philip Lytton; some of the Nat Phillips pantomimes that featured him and Roy Rene as Stiffy and Mo; several Pat Hanna comedies from the depression years staged by his Diggers' Company; and individual works of great value, such as the famous Ella Aerie pantomime, *The Banyp*, and the Australian musical *Collin's Inn*, staged by H. W. Thring in 1933 and starring Gladys Moncrieff and George Wallace.

There is a beautifully presented manuscript of J. C. Williamson's *Struck Oil*, a manuscript copy of Marcus Clarke's 1879 dramatization of Wilkie Collins' novel, *The Moonstone*, and three rival play versions of Clarke's classic, [For the Term of] *His Natural Life*. There are important film discoveries—unknown scenarios for Alfred Rolfe's production of *Robbery Under Arms*, Raymond Longford's and Lottie Lyell's *The Bloke from Woolloomooloo* (released as *The Dinkum Bloke*) and Longford's sound-film version of *Fisher's Ghost*. In a few cases, there is a more graphic record—still pictures of the key scenes from early silent films.

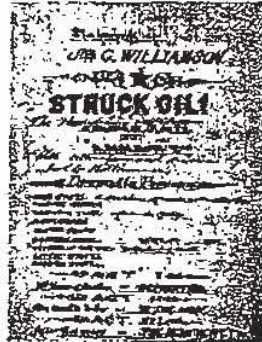
The files also flesh out the lives of the early artists and writers, such as Steele Rudd, one of the many tricked by the sharp traders of the theater, Rudd's first

mistake was to collaborate on a stage script for *On Our Selection* with a man named Beaumont Smith. When it was finished Rudd was completely dissatisfied with the result and refused to authorize it. Bert Bailey, known until that time as Australia's

greatest character actor flattered Rudd, by letter into a new collaboration and while Rudd was still working on sketches for this in Queensland, Bailey secretly launched a production in Sydney. Two weeks later, when reviews reached him, Rudd rushed to Sydney to confront Bailey. That much was known, what was not known was why Rudd was so upset. The answer is in the files uncovered by Fotheringham. The production staged by Bailey was basi-

cally the unauthorized Beaumont Smith collaboration.

Says Fotheringham: "Rudd's problem then was either one of starting court action or negotiating with them to get some money out of it. Well, since it was a huge



J.C. Williamson's hit play

Kate's Honor

The early Australian theater at the beginning of this century was a hotbed of nationalism, and more but effective Australian bush humor. Some scripts managed to combine the two, their melodramatic scenes now seeming to be outrageously funny, even when they were meant to be serious. Take this scene from Frank Shepard and Mabel Mills' *The Kelly Gang*, one of at least six plays on the theme and a popular version, which was first staged in Adelaide in 1911. In this scene, Kelly has slightly wounded Constable Fitzpatrick, who has earlier molested Kelly's sister Kate:

NED: So, Fitzpatrick, we meet at last. FITZ: Surely, Ned Kelly, you would not shoot an unarmed man.

NED: No. Like a true Australian I give a man fair play. Pick up your weapons and defend yourself. You use your left hand, I will use mine. We will stand back to back, walk six paces, on the word we will turn and fire, you understand, Fitzpatrick. Now. One. Two. Three.

(After only three paces Fitzpatrick turns and fires at Ned).

FITZ: Missed. Damnation.

NED: You coward, I would have only winged you, now I will kill you. (Shoots, Fitz falls). So die, all who like you, forger they have sisters of their own.

fit almost from the first night, Rudd tried the latter, but Beaumont Smith picked up 50% of the royalties and Bert Bailey picked up the other 50%. This went on for the next 20 to 30 years while the play toured Australia. Occasionally, Bert Bailey chucked Rudd the odd quid with a letter saying, 'expenses have been high this week, but here's a fiver for you.' That was all Rudd got."

The collection has also provided new evidence of Rudd's artistic ability—two new, full-length plays and an earlier version of a later stage success, *Granddad Rudd*. Drama historians will also be excited by other finds, such as the original script of Betty Roland's *The Touch of Silk*. The 1920s play, about a woman who surrenders her reputation to save her husband from a murder charge, was published in a later version, so the existence of an original script will allow study of Roland's development as a writer. Roland, now 84, has forgotten many of the details that the script reveals. When Fotheringham contacted her and asked when she had changed the heroine's name from Yvonne to Jeanie, as it appears in later versions, Roland denied that she had done so. "I found another play of hers called *Feet of Clay* and she said she'd never written a play called that," says Fotheringham. "One of the plays she did remember was a Chinese fantasy called *Lotus Flower*. J. C. Williamson's were going to do it here and in London, but then the depression hit and the whole thing died. Betty didn't keep a copy of it. No one did, so the only copy is the one in the files."

There are at least five new film scripts by Raymond Longford, the father of the Australian film industry and the man who made *The Sentimental Bloke*—a classic still shown at international film retrospectives. The files enhance the reputation of partner Lottie Lyell, who is shown to have co-written and directed many of the Longford films.

An equally important discovery is a collection of plays based on Australia's first literary classic—[For the Term of] *His Natural Life* by Marcus Clarke. Little is available of Clarke's own work, because much of it was written before the colonial copyright legislation, but there is a copy of his dramatization of Wilkie Collins' English novel *The Moonstone*. Says Fotheringham: "We knew that he'd done it from newspaper reports, but we didn't know anything else about it. Now we've got a complete manuscript. Don't ask me what it says. You'd need a Marcus Clarke handwriting expert to tell you about it."

A few years later, after Clarke's death, in 1881, three versions of *His Natural Life* were submitted for copyright. Fortunately for Clarke's wife, who had been left with six children, she was the first to register performing rights, so when the copyright battle was finally won by a producer named Alfred Dampier, she received royalties for the next 20 years. "The good guys won that time," says Fotheringham.

—By Ken Edwards



At work in Canberra's archives building, home of the copyright collection.

History in Cardboard Boxes

Not even the keepers know the contents



In an unprepossessing warehouse in Canberra's industrial suburb of Fyshwick, stored rack upon rack 15 meters high, are official records and files held by the Australian Archives, keeper of the country's bureaucratic history. Two of these racks hold 325 shelf meters—2,240 cardboard boxes containing some 65,000 documents in fading brown paper envelopes—of what is part, but only part (there are 604 meters in total), of the Commonwealth literary copyright collection from 1907 to 1969. And no one knows exactly what is in the boxes. "We wouldn't have a clue in most cases," admits the archives ACT Regional Director Paul Mullins. "We just don't have the staff or the resources. Probably many of these files have not been opened since the day they were started."

The Fyshwick warehouse is one of five archives repositories in Canberra and one of 17 throughout the country. In all, the Australian Archives has custody of 404 shelf kilometers of official records totalling some 28 million documents, plans, photographs, films, models, tapes and disks from all facets of government administration since Federation. To administer this vast volume of material, which is growing at the rate of 25 kilometers a year, is a nationwide staff of 420 with an annual budget of \$A15 million.

Not only do the archives hold all Commonwealth copyright files from 1907; there are many state colonial records administered by various patent and trade mark offices dating back to the early 1870s in the fields of both literature and fine arts. In June 1904 the first Commonwealth Patents, Acts transferred control of "all records, deeds, and documents, with appendages, models and incidents" from state offices to the new Federal Government. Until

1933, many of these records, together with those of the new Commonwealth, sat in a warehouse of the old Patents, Trade Mark, and Designs Office in Bohrke Street, Melbourne. Then they followed the physical transfer of these administrative functions to the new national capital where they were amalgamated with the Copyright Office in a building in Kings Avenue, Barton, not far from the new Parliament House. And there, for most of the next 40 years until 1971, they were housed in various storage facilities that are now remembered as being old fibro warehouses.

In recent years, under the impetus of the Gorton Government and later the Whitlam Government, the

Australian Archives has gradually evolved as a separate statutory authority. But not until now has the vast copyright collection, essentially dead files since the change in copyright law in 1969, revealed the full scope of its rich harvest of cultural and social history.

—By Alan Ramsey



Preserving an old poster