

CHAPTER 3

DOCUMENTARY EVIDENCE

*There has to be a large box somewhere holding all these missing documents.*¹

3.1 The above quotation summarises a commonly held view regarding the status of the evidentiary material relating to the loss of HMAS *Sydney*. As a result of the ongoing suspicion that material has been misplaced, concealed or lost, the Committee was asked to examine as part of its Terms of Reference (1) the extent to which all available archival material has been fully investigated and whether any relevant material has been misplaced or destroyed; and (2) all relevant archival material available from allied and former enemy forces.

Australian Material

3.2 The National Archives of Australia² has the responsibility for preserving and making available for research Commonwealth government records. There was no legislative control over the disposal of Commonwealth records until the *Archives Act 1983* which confers on Archives wide powers of control over the disposition of records generated by Commonwealth government departments and agencies. Prior to that date, the control, retention and disposal of records was the responsibility of individual government departments and Commonwealth agencies.³ Their practices and standards of archival maintenance varied widely, especially in the area of retention and culling. While some departments marked the appropriate register or index with the annotation 'Destroyed' when a document was discarded, this was by no means a universal practice. It is therefore not possible, with any degree of certainty, to establish whether a document once existed and has subsequently been destroyed.⁴ This has had an important bearing on the allegations made in a number of submissions that material has been withheld or destroyed by 'Archives' (a term that is often used generically to denote record-maintaining bodies prior to the proclamation of the *Archives Act*): in the case of alleged destruction, it would not always be possible to establish that a particular document ever existed.

3.3 The policy on access to records held by Archives has evolved over the past 25 years. Until 1966, access was restricted to records at least 50 years old (the '50 year rule'). Following the example of the Public Record Office (PRO) in the United Kingdom (the repository for British official records), which introduced a 30 year rule in the mid 1960s to enable the First World War records to be studied as a whole rather than on an annually advancing piecemeal basis, the Australian Government changed the access rules in Australia to permit access to records up to the end of 1922. A 30 year rule (excepting Cabinet records)

1 Eneberg, Transcript, p. 413.

2 Formerly known as 'Australian Archives', under which it made its original submission (No 63) to the inquiry. For ease of reference, the term Australian Archives has been used throughout this report.

3 Australian Archives, Transcript, p. 82.

4 Australian Archives, Submission, p. 873.

was introduced in 1970, and the decision was taken to accelerate access to records pertaining to the Second World War, which in general were available for public examination from 1972. However, government departments had the power unilaterally to withhold documents on the grounds of a reasonably wide definition of 'sensitivity' (involving, for example, questions of national security or personal embarrassment), and there was no right of appeal against such a decision.

3.4 It was not until the proclamation of the *Archives Act* that the public was granted a statutory right of access to Commonwealth government records over 30 years old. In cases where access is refused, the reasons for the refusal must be provided, and an applicant now has the right to have the decision reviewed by an independent assessor, usually the Administrative Appeals Tribunal.⁵

3.5 In 1995, partly in response to the persistent calls from some *Sydney* researchers for a systematic archival search for material that might have some bearing on the controversy, Archives began to prepare a wide-ranging guide to the records that were either known to exist or which could be located in a search centred on the 12 government departments or agencies most likely to have relevant material in their record holdings.⁶ The result of this search was Richard Summerrell's *The Sinking of HMAS Sydney: A Guide to Commonwealth Government Records*, a 190 page listing, with commentary, of 'all Commonwealth government archival records that are known to exist on the loss of HMAS *Sydney*'.⁷ Although the Director-General of the National Archives of Australia, Mr George Nichols, said in his appearance before the Committee that the role of Archives staff was as archivists rather than researchers,⁸ it is the Committee's view that the *Guide* is a piece of substantial research in its own right, and notwithstanding the criticisms of it from some quarters, it remains the single most impressive assessment of the government's records.

3.6 In compiling the *Guide*, Archives staff examined the indexes and registers of the 12 key government departments and agencies 'that might be expected to have been involved in events surrounding the *Sydney*'s loss'.⁹ The records generated by these departments and agencies comprise 21.6 shelf kilometres of documents.

3.7 In the *Guide*, its submission to the inquiry and its statements to the Committee, Archives has stressed that while its search has been conducted on a wide basis, 'it is not possible to claim that all relevant records have been identified'.¹⁰ This statement holds true

5 The development of the Commonwealth Government's access policy is outlined in Richard Summerrell, *The sinking of HMAS Sydney: A Guide to Commonwealth Government Records* (Canberra; Australian Archives, 1997), Appendix 6, pp. 181-182. The Guide is now available on the Archive's web site at <http://www.naa.gov.au/publicat/guides/sydney/contents.htm>.

6 The departments or agencies were: Navy Office, 1939-1954; Naval Board, 1941-1949; Department of Defence Coordination, 1939-1942; Department of Defence, 1942-1971; RAN Hydrographic Office, 1920-1956; Department of the Army, 1939-1945; Directorate of Prisoners of War and Internees, 1942-1947; Department of Air, 1939-1961; Department of Information, 1939-1950; Investigation Branch, 1939-1945; Attorney-General's Department, 1939-1949; Prime Minister's Department, 1939-1945.

7 *ibid.*, p. 5.

8 Australian Archives, Transcript, p. 82.

9 Australian Archives, Submission, p. 870.

10 To illustrate this point, a file detailing the discovery of a lifebuoy ex HMAS *Sydney* on a French beach in 1951 has just come to light, and was recorded in a card index in the Australian Archives. The file is not listed in the Australian Archives Guide (for details see Page, Submission, pp. 3715-3717 and 3912-3913.) While Page claims the lifebuoy may have come from HMAS *Sydney* II, the Department of

for *any* archival search on *any* subject, and would not cause any experienced researcher any surprise. Records can be poorly indexed so that their discovery is more of a matter of chance than focused research; they can, over time, be mis-filed – thereby making them all but inaccessible to any rational search – or they can be lost or inadvertently destroyed. Archives goes on to say that any further search, short of examining every file in every record of every government department or agency, would have to be undertaken on the basis of an explicit rationale and methodology that restricted the scope of the search to manageable proportions. Given that the Archives search has already encompassed the 12 key government departments and agencies, it is difficult to see on what basis such a search could be conducted.

3.8 The suggestion that *all* records held should be examined on the remote possibility that they might contain something related to *Sydney* does not commend itself to the Committee. Archives has stated that if the search in the 12 chosen departments and agencies were to be extended beyond that suggested by examining the registers and indexes, i.e. if every document in the 21.6 kilometres of records was to be examined, 'this ... would take 27,102 working (8 hour) days, based on a reading/skimming rate of 10 centimetres of records (approximately 1000 pages) per hour'.¹¹ Such an unfocused search would defy the principles of historical research, would be extravagant in terms of time and cost, and could not be demonstrated, in advance, as offering any reasonable chance of producing commensurate outcomes. However, as the Director-General made clear in his testimony to the Committee, any member of the public is entitled to search any records held by Archives, whether or not those records have been identified as being potentially of relevance.¹² It is not the role of Archives to direct the research of individuals but to assist where possible in research that individuals wish to undertake. The *Guide* is an invaluable resource in this regard, but it is not definitive, and does not claim to be so.

3.9 A key concern of many enquirers into the loss of HMAS *Sydney* is the existence (or absence) of signals from *Sydney* at the time of the action. In evidence before the Committee in Canberra on 27 March 1998, officers from the Defence Signals Directorate stated that a number of documents in the series MP1074 (Classified outward signals, 1939-1964) which DSD had examined for sigint¹³ material that might require exemption from public release under section 33 of the *Archives Act 1983* had gone missing between DSD and the Melbourne office of Australian Archives in December 1991.¹⁴ In May 1998, following concerns expressed by several members of the Committee about the importance of locating the missing material in order to allay suspicions that vital records relating to signals from or about the *Sydney* were being withheld from the public, DSD examined all 2000 boxes of the MP1074 records, but was unsuccessful in finding the missing documents.¹⁵

3.10 In June 1998 DSD located duplicates of all but three of the missing 218 items, and by positively identifying the copies, has been able to reconstruct the file almost in its entirety. From the details recorded in the 1991 list of exemptions applied by DSD, it can be determined that the three missing documents refer to the period April-May 1941, and thus are unlikely to have any bearing on the *Sydney-Kormoran* encounter. Further, when DSD

Defence believes it more likely to have originated from HMAS *Sydney* III, which was in European waters between July and October 1950 (Submission, p. 4487).

11 Australian Archives, Submission, p. 871.

12 Australian Archives, Transcript, p. 82.

13 signals intelligence. See DSD, Transcript, p. 44.

14 *ibid.*, pp. 55-56.

15 DSD, Submission, p. 4004.

examined the previously exempted documents, it concluded that the exemption was no longer justified on the grounds of any continuing sensitivity, and on 5 June 1998 it advised the Melbourne Director of Australian Archives that the exemptions should be lifted, with immediate effect.¹⁶ Prior to this decision, the historical adviser assisting the inquiry examined all those signal packs in MP1074 that fell within the date range in which signals relating to *Sydney* might reasonably be expected to be found (i.e. allowing for mis-filing in what were chronologically arranged sequences). No signals, other than those identified in Richard Summerrell's *Guide*, were located.

3.11 The Committee believes it is unlikely that any material relating to the Second World War still retains a degree of sensitivity that warrants exemption. The question of access is further complicated by the practice whereby material that is technically 'open' cannot be accessed until it has been cleared on a piece by piece basis. The Committee believes that the decision should be taken to make all material relating to the Second World War open to public access on a blanket basis, thereby placing the onus on individuals to undertake the archival research that underpins historical inquiry, free of restrictions which in the past have fuelled suspicions that material is being withheld.

3.12 The Committee recommends that:

- 1. the Australian Government review the operations of the *Archives Act 1983* in regard to World War II material, with a view to providing full public access to all material.**

Overseas Sources

3.13 In the course of the inquiry, and in the published literature that has surrounded the controversy, frequent reference has been made to the possibility of the existence of relevant material in foreign archives that has not yet been accessed by *Sydney* researchers. There would appear to be widespread acceptance of the view put forward by one witness that 'there must be material in documents in the UK, the USA, Holland, Hong Kong, and all sorts of places ... that will assist us all in discovering the truth'.¹⁷ Another witness argued that the search should be widened to include, among others, Russian and Polish archives.¹⁸ In this regard the advice of the Director-General of the National Archives of Australia holds true; any further search must be based on an explicit and rational basis that offers some chance of success. The historical adviser assisting the inquiry has undertaken clarification of the archival situation in several countries most likely to hold relevant material.

3.14 German records were used extensively by Barbara Winter in her writings on *Sydney*.¹⁹ There are no obvious sources remaining to be checked, and unless a reasoned basis

16 *ibid.*, p. 4005.

17 McDonald, E, Transcript, p. 226.

18 Jones, Gascoyne Historical Society, Transcript, p. 259. The rationale for examining Polish archives appears to be the fact that the *Kormoran's* original wartime home port was Gdansk (formerly Danzig). The connection is tenuous, to say the least. Similarly, the fact that on a recent visit to Russia the German Chancellor sought to reopen the long-standing question of the return of German records taken to the Soviet Union at the end of the Second World War in no way establishes a possible connection with the fate of *Sydney*, nor does it suggest any basis for the belief that the Russian archives might contain relevant material.

19 Winter, *op. cit.*, pp. 271-274.

for further searches in the German archives could be developed, it is unlikely that anything would be gained by additional work in this area. There is also a contradiction in the position of those who call for more research in the German archives yet who reject the general thrust of the German accounts: if the latter are unreliable, what could be gained by more research in German sources, especially given that the bulk of such German sources bearing on the activities of the *Kormoran* would have been generated by the very people whose eyewitness accounts are regarded as fabrications.

3.15 Dutch signals intelligence operating out of the Netherlands East Indies (with several operatives also, it is claimed, working in Western Australia)²⁰ is the most obvious likely source of additional material on *Sydney*. However, it has been confirmed by the Dutch Institute for Maritime History that all this material was destroyed before the Japanese capture of the Netherlands East Indies, and that Dutch accounts of the pre-war period in Southeast Asia were reconstructed from secondary accounts and personal recollections.²¹ Similarly, there is no material in the central Dutch archives in The Hague relating to activities involving the *Sydney*.²²

3.16 The great bulk of British records concerning the Second World War were released for public examination in 1972.²³ Some records relating to intelligence matters were excluded from this release but most have subsequently been opened. All material known to relate to HMAS *Sydney* has been released to the Public Record Office where it is available for public inspection.²⁴ Two possibilities remain:

- (a) Fleet Order No 4131 issued by the Admiralty at the beginning of the Second World War required that in any case involving loss of or damage to one of HM Ships, a copy in duplicate of the Board of Inquiry (if one was held) had to be deposited with the Admiralty in London. The Head of the Naval Historical Branch in the Ministry of Defence (the successor to the Admiralty) has confirmed that no such report relating to the loss of HMAS *Sydney* is held by the Ministry of Defence.²⁵ This is not conclusive proof that there *was* no Board of Inquiry, but if there was, there is no evidence of its report being held in London. The fact that despite extensive searches no such report has been located in Australia tends to suggest that despite the seriousness of the loss of *Sydney*, the war situation in late 1941-early 1942 was so precarious that there were other more pressing matters to occupy the time and energy of senior naval personnel. It seems highly unlikely that had a report been written, it would not have been passed to the Admiralty, not least for the purpose of instructing the Royal Navy in what *not* to do when encountering a suspected raider. This matter is discussed further in Chapter 6.²⁶

20 *ibid.*

21 Letter, Dr P C van Royen, Director, Institute for Maritime History, 20 January 1998, to Professor Peter Dennis.

22 Letter, Dr P C van Royen, Director, Institute for Maritime History, 17 November 1997, to Professor Peter Dennis.

23 See *The Second World War: A Guide to Documents in the Public Record Office* (London: HMSO, 1972), 'Introduction', p. vii.

24 Letter, Dr A J Pocock, Acting British High Commissioner, 29 October 1997, to Professor Peter Dennis.

25 Letter, Mr J D Brown, OBE, 1 July 1998, to Professor Peter Dennis.

26 See paras 6.108-6.120.

- (b) A 75 year closure has been imposed on some Churchill-Roosevelt correspondence relating to late 1941; that closure was lifted in August 1998, and the material is now open to public access in the Public Record Office. Given that the nature of this correspondence was, in accordance with the closure, not revealed, there was scope for suggesting that it referred to the *Sydney*, most probably to the alleged involvement of a Japanese submarine, which – so the theory runs – Churchill was anxious to conceal (but not from Roosevelt) so as to enable the latter to declare war once Japan had attacked Pearl Harbour. A broader consideration of Anglo-American relations makes this scenario unlikely in the extreme, but so long as these records remained closed, such claims could not be refuted with certainty. The opening of those records has destroyed those claims, at least in so far as this previously closed file was alleged to provide evidence to support them.²⁷

3.17 A number of submissions, together with such books as Michael Montgomery, *Who Sank the Sydney?*, allege that a Japanese submarine was involved. Japanese naval records were largely destroyed at the end of the Second World War, but what records now exist offer no evidence in support of this allegation. The movements of all I-class submarines, the only ones capable of operating at the distances required for them to have been involved in the loss of *Sydney*, have been accounted for: none was in or near the area concerned. It remains for those who have made these allegations to produce more substantial evidence than they have heretofore proffered in support of their theory. The claims of Japanese submarine involvement in the loss of HMAS *Sydney* are considered in more detail in Chapter 5.

27 The previously closed material refers to the activities of a number of British men who were alleged to have undesirably close relations with the Japanese embassy in late 1941. Suspicion fell in particular on the Scottish peer, Lord Semphill (1893-1965) who had been retained by the Japanese as an adviser since 1925, having led a mission to organise the Imperial Japanese Naval Air Service, and whose activities had been investigated by the Attorney-General and the Director of Public Prosecutions. Although it was decided not to proceed against Semphill, he undertook to sever his relations with the Japanese government and the Mitsubishi Company and to accept no further payment from them. Suspicions about Semphill continued to circulate, especially in light of his position in the Department of the Director of Air Materiel in the Admiralty, where his work on air accidents gave him access to the latest technical information about aircraft and equipment. On Churchill's direct orders, 9 October 1941, Semphill was removed from his position (Source: PREM 3.252/5). The material that has been released refers to the period 17 September-16 October 1941, and therefore has no bearing on the *Sydney-Kormoran* encounter. There are two exclusions in the material, but given the date range it is reasonable to assume that these withheld documents similarly have no connection with the *Sydney*.