

From the Office of the Director-General

Our reference: 2010/3498

To: All Commonwealth departments and agencies, all Commonwealth authorities, Commonwealth companies, other Commonwealth institutions and successors to former Commonwealth entities which retain Commonwealth records.

Notice of Disposal Freeze: Post Cornwell Superannuation Case Litigation — Processing of Additional Claims

The purpose of this document is to notify Australian Government agencies and other agents or people in possession of Commonwealth records that I have extended and broadened the disposal freeze on selected personnel and other records. These records may be needed in processing claims against the Commonwealth concerning eligibility to join a Commonwealth superannuation scheme.

Background

Although individuals who were employed:

- by the Commonwealth in a temporary (now non-ongoing) or exempt (for industrial staff) capacity; or
- by certain Commonwealth authorities which were 'Approved Authorities' for *Superannuation Act* purposes (see list of Approved Authorities in Schedule 3);

were not *required* to join a superannuation scheme, there was provision under the relevant legislation for them to *elect* to apply to join and be accepted as members. In April 2007 the High Court found the Commonwealth liable for damages because negligent advice about eligibility to join a scheme was given to one of these employees¹. The Commonwealth is now responding to a large number of additional claims.

The aim of the disposal freeze is to avoid the risk of losing crucial evidence for processing these claims. The disposal freeze is to ensure the protection of rights and entitlements of the individuals who have presented claims and of the Commonwealth in defending or processing those claims.

The decision to extend the disposal freeze was made at the request of and in consultation with the Department of Finance and Deregulation, the agency responsible for managing the litigation currently before the courts.

¹ *Cornwell v the Commonwealth of Australia* [2005] ACTSC 14 (4 March 2005); appeal - *Commonwealth of Australia v Cornwell* [2006] ACTCA 7 (8 May 2006); appeal from the ACT Supreme Court - *Commonwealth of Australia v Cornwell* [2007] HCA 16 (20 April 2007)

Authority

This action is taken pursuant to section 24(2)(b) of the *Archives Act 1983*.

Agencies affected

The disposal freeze applies to Australian Government departments/agencies and other agents or people in possession of Commonwealth records. This includes Commonwealth institutions as defined in the *Archives Act 1983*. It also includes bodies (and their successors), such as statutory authorities and statutory companies, that have ceased to be part of the Commonwealth, but which still have possession or custody of Commonwealth records.

All of these entities are referred to below and in Schedule 1 collectively as '**Affected Agencies**'.

Records affected

The categories of Commonwealth records affected by the disposal freeze are described in Schedule 1.

In broad terms, the disposal freeze covers the personal history and superannuation contribution records of current and former

- Australian Public Service and Defence Force staff;
- Commonwealth staff; and
- Approved Authority staff (as noted above, this is a reference to Approved Authorities for *Superannuation Act* purposes (see list in Schedule 3)).

It also covers policy, administrative and general correspondence records relating to superannuation.

The disposal freeze applies to Commonwealth records that could otherwise be destroyed under Records Authorities issued by the National Archives. In practice, the freeze should only affect those records due to be destroyed within the period of the freeze, not the total quantity of records that fit the description of records. Records not covered by the freeze, but which may be relevant to processing of claims, should be retained in accordance with usual arrangements.

Records Authorities affected

This notice has the effect of temporarily suspending, for the period of the freeze, the operation of disposal classes relevant to the records described in Schedule 1. Records Authorities that may have been used to sentence records covered by the disposal freeze are listed in Schedule 2. There may be other relevant Records Authorities, not on the list, under which records covered by the disposal freeze may have been sentenced.

The disposal freeze applies to all records that fall within the categories described in Schedule 1, not just to records sentenced under the disposal classes listed.

The disposal classes may still be used to dispose of records that are not covered by the freeze, provided agencies are satisfied that no records that are covered by the disposal freeze are included in the consignments or batches to be destroyed. Some agencies may find it convenient to halt all destruction of personnel records during the period of the disposal freeze rather than try to identify those that are subject to the freeze.

Duration

The disposal freeze is in force from 1 January 2011 until 31 December 2015. Notification will be issued if it is necessary to further extend the disposal freeze.

Action required

Affected agencies and other agents or people in possession of Commonwealth records should:

1. Ensure that staff responsible for records management are informed of the disposal freeze.
2. Check if they or their records service providers have any records due or overdue for destruction that come within the scope of the disposal freeze.
3. Withhold from destruction any such records identified
4. Retain the records for the duration of the disposal freeze or until further notice

The preparation for sentencing of records affected by the disposal freeze can continue. However, the records must be set aside and retained for the period of the disposal freeze. The records should be retained by the agency - they will not be accepted for transfer to the Archives. Agencies have the option either to identify and set aside the particular records covered by the freeze, or to implement a broader freeze on all records likely to contain relevant material.

This disposal freeze does not require agencies to conduct detailed searches for records that may be needed for processing claims.

Impact

The processing and storage costs arising from the implementation of this disposal freeze will need to be borne by the agencies or other agents or people concerned.

Enquiries

For enquiries, please contact the Agency Service Centre from the NAA website at <http://www.naa.gov.au/records-management/help/index.aspx> or (02) 6212 3610.



Ross Gibbs

Director-General

16 December 2010

SCHEDULE 1:

Categories of records subject to the disposal freeze

The categories listed below have been identified as those most likely to contain relevant records.

1. Personnel and other records of all former and current APS, Defence Force, Commonwealth or Approved Authority staff who were:

- a. born in or after 1892; and**
- b. who were in such employment at any time between 1 November 1942 and 31 December 1999;**

where those records relate to service history; terms, conditions and benefits of employment; supervisory responsibilities; salary history; or superannuation (including scheme information, applications, contribution history and eligibility for superannuation).

Notes

Category 1 now applies to permanent or ongoing as well as temporary/exempt or non-ongoing employees.

The relevant records of these employees may have been kept together with other documents and transferred between agencies if the person was promoted or transferred. Potential claimants could have worked in any area of the Commonwealth or an Approved Authority at any time over the last 50 or more years (see Schedule 3 for a list of Approved Authorities).

Because of movements of staff between the APS and the Defence Force, the records of military personnel may contain relevant information.

Agencies may find it more convenient to implement a broader freeze on all records likely to contain relevant material than to identify those that are subject to the freeze and withhold them from destruction. For example, an agency could cease destruction of all personnel records for the period of the freeze or, alternatively, could cease destruction of all records that relate to the categories listed above.

The scope of records affected by the disposal freeze includes employees:

- born in or after 1892 - this is because persons of such age may have been eligible to join a Commonwealth superannuation scheme, and their estates could potentially make claims. Alternatively, they may be the person alleged to have given negligent advice;
- and who were in APS, Defence Force, Commonwealth or Approved Authority employment at any time between 1 November 1942 and 31 December 1999 - this range is selected because 'temporary' or 'exempt' employees of the Commonwealth, and employees of Approved Authorities, were first able to apply to join Commonwealth superannuation in 1942 and all relevant claim circumstances likely occurred prior to 2000.

The Commonwealth superannuation schemes to which this Notice relates are the 1922 Act Scheme, the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation (PSS), Scheme the Defence Force Retirement and Death Benefit

(DFRDB) Scheme and the Military Superannuation Benefit Scheme (MilitarySuper).

Records authorities relevant to Category 1 are listed in Schedule 2. This list is not exhaustive.

2. Records of Comsuper and its predecessors relating to all former and current APS, Defence Force, Commonwealth or Approved Authority staff who were born in or after 1892 and who were in such employment at any time between 1 November 1942 and 31 December 1999.

Notes

Category 2 now covers a broader range of employees than previously.

Predecessors of Commonwealth Superannuation Administration (Comsuper) were:

- Retirement Benefits Office
- Australian Government Retirement Benefits Office (AGRBO)
- Office of the Superannuation and Defence Forces Retirement Benefits Boards
- Superannuation Branch, Treasury
- Superannuation Fund Management Board/from 1930 Superannuation Board
- DFRB Section, Defence Division, Department of the Treasury.

Records authorities relevant to Category 2 are listed in Schedule 2. This list is not exhaustive.

A list of Approved Authorities is contained in Schedule 3. This list is not exhaustive.

3. Records of medical examinations of temporary, exempt or Approved Authority employees that were undertaken for *Superannuation Act* purposes (excluding x-rays), where those employees were:

- a. **born in or after 1892; and**
- b. **employed at any time between 1 November 1942 and 31 December 1999.**

Notes

In contrast to other categories in this Notice, this category relates only to temporary, exempt or Approved Authority employees.

Records that contain only x-rays are not covered by this Notice.

4. All Affected Agencies' records of requests by staff about their superannuation status or requests to join a scheme.

Notes

Although records in this category may also be covered by category 1, the aim here is to ensure that relevant administrative records are covered as well as personnel records.

The Commonwealth superannuation schemes to which this Notice relates are the 1922

Act Scheme, the CSS, the PSS, the DFRDB and the MSBS.

5. Policy and administrative records of Affected Agencies relevant to:

- The topics listed in category 1, namely: service history; terms, conditions and benefits of employment; supervisory responsibilities; salary history; or superannuation (including scheme information, applications, contribution history and eligibility for superannuation).
- Medical examinations undertaken by temporary, exempt or Approved Authority employees for *Superannuation Act* purposes (excluding x-rays).
- Delegation to staff of the right to certify 'prior service', 'likelihood of future service' or 'likelihood of permanent appointment' (eligibility criteria for admittance of temporary or exempt employees into Commonwealth superannuation).
- Provision of information about superannuation (including policies, procedures, forms or eligibility information) to Commonwealth entities, Approved Authorities or the staff mentioned in category 1 above.
- Superannuation related processes operating between the Commonwealth and Approved Authorities (such as submission of forms, arrangement of medical examinations for *Superannuation Act* purposes, deduction of superannuation contributions from salary payments, remittal of contributions and exchange of questions/answers).
- Processing of applications to join Commonwealth superannuation made by temporary or exempt staff of the Commonwealth or Approved Authority employees.
- Training and instruction provided to any employees (including personnel and industrial officers) of Commonwealth entities and Approved Authorities who had responsibility for communicating information about superannuation to other staff or for certifying applications to join the Commonwealth superannuation scheme.

Note

For most Affected Agencies, it is expected that human resources, personnel department and industrial officer policy files are most likely to contain these sorts of records.

For Affected Agencies with a central coordinating role - such as the Australian Public Service Commission, The Treasury, Comsuper and its predecessors and the Department of Finance and Deregulation - broader records are likely to be affected.

6. Policy and administrative records of the Australian Public Service Commission and of Approved Authorities relevant to arrangements for staffing Approved Authorities.

Note: Staff of Approved Authorities were sometimes employed under the authority's establishing legislation (usually with the Australian Public Service Commission or its predecessors required to approve terms and conditions) and sometimes under the *Public Service Act* (for example, as borrowed or seconded staff). The aim of this category is to capture high level documents detailing how Approved Authorities were staffed and how staff were managed.

See Schedule 3 for a list of Approved Authorities. This list is not exhaustive.

7. In relation to former Approved Authorities which were reconstituted (eg sold, corporatised, privatised) by the Commonwealth, any records of the sale that relate to indemnities or transfer of liabilities.

8. Specific superannuation records relating to, concerning or concerned with:

- a. subsections 4(4), 4(5) and 4(6) of the *Superannuation Act 1922* - these concern the deeming of holders of statutory offices, persons employed other than in a permanent capacity and employees of Approved Authorities to be employees under the Act.
- b. sections 11, 12, 13 and 14 of the *Superannuation Act 1976* - these concern requests by temporary employees, statutory office holders and Approved Authority employees to be treated as eligible employees for the purpose of the Act.
- c. sections 7 and 8 of the *Superannuation Act 1990* - these concern elections by statutory office holders and temporary employees of the Commonwealth or Approved Authorities to become members of the PSS.
- d. The approval of authorities as Approved Authorities under the *Superannuation Acts 1922, 1976 and 1990*.

Note

Although records in this category may also be covered by category 5 the aim here is to ensure that all relevant administrative records are covered by providing reference to key provisions of the superannuation legislation.

9. Records in the above categories held by the ACT Government and the Northern Territory Government, for example: where ACT Public Service (ACTPS) and Northern Territory Public Service (NTPS) employees were formerly APS employees.

The Commonwealth will make separate arrangements with the governments of the ACT and the Northern Territory concerning relevant records in the above categories that they hold. Records still held by the Commonwealth that relate to ACTPS employees and NTPS employees who were formerly APS employees are covered by this disposal freeze.

SCHEDULE 2:

Records Authorities relevant to the disposal freeze

The purpose of this Schedule is to assist agencies identify records that are subject to the disposal freeze. The National Archives will provide updated advice on their website at a later date.

Category 1

Category 1 records include, but are not limited to, those covered by the following disposal authorities issued by the National Archives of Australia.

Administrative Functions Disposal Authority (AFDA) 2000

Entry No.	Function - Activity	Likelihood
1277*	Financial Management - Salaries	Possible
1702	Personnel - Counselling	Possible
1703	Personnel - Counselling	Possible
1708	Personnel – Employment Conditions	Possible
1709*	Personnel – Employment Conditions	Likely
1711	Personnel – Employment Conditions	Likely
1722	Personnel - Grievances	Possible
1744	Personnel - Procedures	Possible
1761*	Personnel - Salaries	Likely
1762*	Personnel - Salaries	Likely

* classes marked with an asterisk in the above table are no longer current due to the revision of AFDA in 2010. If previous sentencing has not been revised following AFDA 2010, the above class numbers can be used to identify records subject to the disposal freeze.

Administrative Functions Disposal Authority (AFDA) 2010

Entry No.	Function - Activity	Likelihood
20938	Financial Management - Salaries	Possible
20963	Personnel – Employment Conditions	Likely
20968	Personnel - Salaries	Likely
20969	Personnel - Salaries	Likely

Previous General Disposal Authorities issued by the Archives

Although replaced by AFDA in 2000 or earlier, some relevant records may remain in consignments of personal history files and related records that were sentenced under earlier GDAs.

GDA 20 – Records Common to Third Level Agencies: Offices Controlled by State or Regional Offices

Entry No.	Function - Activity
9.3	Original records relating to routine staff matters
9.4	Copies of routine records on staff matters

9.5	Records relating to working files/copies of records relating to staff members and temporary employees
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GDA 18 – Administrative and other records common to most State/Regional Offices and Overseas Posts

Entry No.	Function - Activity
35.3	Records maintained in respect of temporary or casual staff employed at state etc offices, and/or locally engaged staff (LES) at overseas posts (excluding routine attendance and leave records covered by entry 35.7 below)

GDA 17 – All Staff and Establishment records

Entry No.	Function - Activity
19.1.1	Personal history files/cards
19.1.2	Personal history files/cards
19.2	Records relating to casual/temporary employees, including exempt personnel, day labour, work experience placements, contract employees, etc.
19.3	Personal history cards relating to senior executive and permanent officers and long-term employees (where still maintained or extant)
19.4	Records which duplicate any of the information covered by entries 19.1, 19.2 or 19.3 (eg photocopies or printouts of such information as salary history statements, allowance entitlements, leave credits, superannuation deduction summaries)

GDS 11 – All Staff and Establishment Records

Entry No.	Function – Activity
3.2.1	Personnel – Personal History
3.2.2	Personnel – Personal History
3.2.4	Personnel – Personal History
3.2.7	Personnel – Personal History
3.2.8	Personnel – Personal History

GDS 9 – All Staff and Establishment Records

Entry No.	Function – Activity
3.2.1	Personnel – Personal History
3.2.2	Personnel – Personal History
3.2.4	Personnel – Personal History
3.2.7	Personnel – Personal History
3.2.8	Personnel – Personal History

GDS 5 – Staff and Establishment Records (supersedes GDS 4)

Entry No.	Function – Activity
Part III, 3	Personal files

Part III, 4	Personal history cards
Part IV, 1	Personal files (Temporary employees)
Part IV, 2	Personal history cards (Temporary employees)

GDS 4 – Personal Staff Records (supersedes GDS 3)

Entry No.	Function – Activity
3	Personal files – other than compensation papers

GDS 3 – Staff Records

Entry No.	Function – Activity
3	Personal files

Agency-specific Records Disposal Authorities (RDAs) and Records Authorities (RAs)

It is possible that some agencies have specific RDAs and RAs that relate to the records covered by the disposal freeze, for example, the RDA for Military Personnel issued to the Department of Defence in April 2003.

Category 2

RDAs for Comsuper and predecessor agencies include:

- RDA 1250 for Commissioner for Superannuation (issued 24 June 1996) – still current
- RDA 694 for Retirement Benefits Office (issued 3 October 1990) – superseded by RDA 1250

RDS S468 for Australian Government Retirement Benefits Office (issued 7 October 1987) – superseded by RDA 694. RDS S468 states that it supersedes the following disposal schedules, all issued 3 November 1977:

- Records Disposal Sub-schedule A1328/DA1
- Records Disposal Sub-schedule A1331/DA1
- Records Disposal Sub-schedule A1333/DA1
- Records Disposal Sub-schedule A3276/DA1.

All of the above relate to records of both Public Service and Military superannuation schemes that were in operation at the time the disposal authority was issued.

SCHEDULE 3

Approved Authorities

This Schedule lists entities that have been Approved Authorities under the *Superannuation Act 1922* (Cth), the *Superannuation Act 1976* (Cth) or the *Superannuation Act 1990* (Cth). This list includes entities that have been renamed or ceased to exist.

This Schedule is not an exhaustive list of Approved Authorities. In addition, not all Approved Authorities on this list will have Commonwealth records under the *Archives Act 1983*. However the Commonwealth seeks the cooperation of those Approved Authorities in retaining any existing records that relate to the matters covered by this freeze.

NB: All current Commonwealth Departments or agencies, Commonwealth authorities and Commonwealth companies are subject to the disposal freeze whether or not they were or are an Approved Authority for Superannuation Act purposes.

Name of Approved Authority
A.C.T. Institute of Technical and Further Education
Aboriginal and Torres Strait Islander Commercial Development Corporation
Aboriginal Areas Protection Authority
Aboriginal Corporation of the National Aboriginal Conference
Aboriginal Development Commission
Aboriginal Hostels Limited
Aboriginal Sacred Sites Protection Authority
ACTEW Corporation Limited
Advisory Council for Inter-government Relations
Aerospace Technologies of Australia Pty. Ltd.
Alice Springs College of Technical and Further Education
Anglo-Australian Telescope Board
ANL Limited
Australian Airlines Limited
Australian Aluminium Production Commission
Australian Apple and Pear Board
Australian Atomic Energy Commission
Australian Broadcasting Commission
Australian Broadcasting Corporation
Australian Canned Fruits Board
Australian Canned Fruits Corporation
Australian Capital Territory

Name of Approved Authority
Australian Capital Territory Electricity and Water Authority
Australian Capital Territory Electricity Authority
Australian Capital Territory Health Authority
Australian Coastal Shipping Commission
Australian Corporation of the National Aboriginal Conference
Australian Dairy Produce Board
Australian Defence Industries Pty. Ltd.
Australian Egg Board
Australian Film Commission
Australian Film Development Corporation
Australian Fisheries Management Authority
Australian Honey Board
Australian Industry Development Corporation
Australian Institute of Aboriginal Studies
Australian Institute of Multicultural Affairs
Australian Institute of Sport
Australian International Hotel School
Australian Marine Science and Technology Limited
Australian Maritime College
Australian Meat and Live-stock Corporation
Australian Meat and Live-stock Research and Development Corporation.
Australian Meat Board
Australian National Airlines Commission
Australian National Training Authority
Australian National University
Australian Nuclear Science and Technology Organisation
Australian Overseas Projects Corporation
Australian Pork Corporation
Australian Postal Corporation
Australian Sports Commission
Australian Sports Drug Agency
Australian Stevedoring Industry Authority
Australian Telecommunications Corporations

Name of Approved Authority
Australian Tobacco Board
Australian Tourist Commission
Australian Trade Commission
Australian Wheat Board
Australian Wine and Brandy Corporation
Australian Wine Board
Australian Wool Board
Australian Wool Bureau
Australian Wool Research and Promotion Organisation
Australian Wool Corporation
Batchelor College
Board of Management of the Australian War Memorial
Calvary Hospital A.C.T. Incorporated
Canberra College of Advanced Education
Canberra Commercial Development Authority
Canberra Community Hospital Board
Canberra Hospital Management Board
Canberra Institute of the Arts
Canberra Showground Trust
Canberra Theatre Trust
Capital Territory Health Commission
Centralian College
Civil Aviation Authority
Commonwealth Accommodation and Catering Services Limited
Commonwealth Bureau of Roads
Commonwealth Funds Management Limited
Commonwealth Hostels Limited
Commonwealth Scientific and Industrial Research Organization
Commonwealth Serum Laboratories Commission
Construction Industry Development Agency
Coselco Mimotopes Pty. Ltd
Cotton Research and Development Corporations
Council of the Canberra University College

Name of Approved Authority
Dairy Research and Development Corporation
Darwin Community College
Darwin Institute of Technology
Dried Fruits Control Board
Energy Research and Development Corporation
Export Finance and Insurance Corporation
Export Payments Insurance Corporation
Film Australia Pty. Limited
Fire Service of the Northern Territory
Fisheries Research and Development Corporation
Flax Commission
Forest and Wood Products Research and Development Corporation
Grains Research and Development Corporation
High Court of Australia
Horticultural Research and Development Corporation
Housing Commission constituted under the Housing Ordinance 1959-1969 of the Northern Territory of Australia
Housing Loans Insurance Corporation
Institute of Family Studies
Katherine Rural College
Land and Water Resources Research and Development Corporation
Law Courts Limited
Legal Aid Commission (A.C.T.)
Menzies School of Health Research
Milk Authority of the Australian Capital Territory
Museums and Art Galleries Board established by the Museums and Art Galleries Ordinance 1965-1970 of the Northern Territory of Australia
National Aboriginal Sports Foundation Aboriginal Corporation
National Capital Development Commission
National Companies and Securities Commission
National Exhibition Centre Trust
National Registration Authority for Agricultural and Veterinary Chemicals
National Standards Commission

Name of Approved Authority
Northern Territory Development Corporation
Northern Territory Electricity Commission
Northern Territory of Australia
Northern Territory Open College of Technical and Further Education
Northern Territory Port Authority
Northern Territory Reserves Board
Northern Territory Tourist Board
Northern Territory Tourist Commission
Northern Territory University
OTC Limited
Overseas Telecommunications Commission (Australia)
Parliament House Construction Authority
Pig Research and Development Corporation
Pork Promotion Committee
Power and Water Authority
Private Health Insurance Administration Council
Rural Industries Research and Development Corporation
Snowy Mountains Engineering Corporation
Snowy Mountains Engineering Corporation Limited
Snowy Mountains Hydro-electricity Authority
Special Broadcasting Service
Superannuation Fund Investment Trust
Telstra Corporation Limited
Totalcare Industries Limited
Trade Development Zone Authority
Trustees of the Services Canteens Trust Fund
University College of the Northern Territory
University College, being the college established by the University of New South Wales within the Australian Defence Force Academy
University of Canberra
University of Canberra sponsored by Monash University
University Planning Authority
Wool Research and Development Corporation