

Our reference: 2015/1232

Notice of disposal freeze

Records related to *Cornwell*-type superannuation claims

To all Commonwealth departments and agencies, all Commonwealth authorities, Commonwealth companies, other Commonwealth institutions and any other entity that holds Commonwealth records.

This document notifies Australian Government agencies, and other agents or people in possession of Commonwealth records, that I have extended and changed the application of the 'Post *Cornwell* superannuation case litigation – processing of additional claims'. The freeze was issued on 16 December 2010 and covers selected personnel and other records.

This notice of disposal freeze covers records which may be needed to manage claims made against the Commonwealth by people who allege they were given the wrong information about their eligibility to join a Commonwealth superannuation scheme. It applies until 31 December 2030.

The decision to extend and change the disposal freeze was made at the request of and in consultation with the Department of Finance, which is the agency responsible for managing *Cornwell*-type superannuation claims.

Background to *Cornwell*-type superannuation claims

A large number of claims have been made against the Commonwealth by people who allege they were given the wrong information about their eligibility to join a Commonwealth superannuation scheme. The claimants say that they relied on the wrong information and suffered financial loss as a consequence. These claims are generally referred to as *Cornwell*-type superannuation claims, following a decision by the High Court of Australia in one such claim made by Mr *Cornwell*.¹

The claims typically relate to events that occurred between 1960 and 2000.

A more detailed description of the claims is provided in Schedule 4.

Purpose and effect of the disposal freeze

The purpose of this disposal freeze is to ensure the preservation of records relating to current and future *Cornwell*-type claims. These records are needed to protect the rights and entitlements of, and fulfil the obligations of, claimants, the Commonwealth and other parties.

It is likely that some of the records covered by this disposal freeze have been authorised for destruction under general and agency-specific records authorities issued by the National Archives of Australia. The purpose of this disposal freeze is to prevent any such destruction and to ensure that all relevant existing and future records are available for current and future claims.

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) 229 CLR 519 (20 April 2007).

This disposal freeze suspends the National Archives' permission to destroy any relevant records that could otherwise be legally destroyed under records authorities issued by the National Archives.

Authority

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

Records affected

This disposal freeze applies to all Commonwealth entities and other entities that are in possession of Commonwealth records. This includes statutory authorities and statutory companies that have ceased to be part of the Commonwealth, but which may still have possession or custody of Commonwealth records (including records of defunct or predecessor entities).

The disposal freeze covers the categories of records described in Schedule 1.

Records authorities relevant to records covered by this freeze include:

- relevant [agency-specific records authorities \(RAs\)](#) and records disposal authorities (RDAs) in use or used in the past by agencies, including authorities issued before 2000.
- relevant [general records authorities \(GRAs\)](#), including [AFDA Express and AFDA \(2010\)](#), and superseded GRAs and general disposal authorities (GDAs)

[General Records Authority 31 'Destruction of source or original records after digitisation, conversion or migration' \(GRA 31\)](#) may be used in limited circumstances if prior confirmation has been obtained from the Department of Finance. The process for obtaining confirmation from the Department is described in Schedule 2. Until confirmation is obtained from the Department of Finance, this disposal freeze specifically excludes the application of GRA 31.

In broad terms, this freeze covers:

- employment records and superannuation records of current and former:
 - Australian Public Service and Defence Force staff;
 - other Commonwealth entity staff; and
 - Approved Authority staff (see the list in Schedule 3 for a non-exhaustive list of Approved Authorities for *Superannuation Act* purposes);
- policy and administrative records relating to superannuation;
- policy and administrative records relating to how staff of Approved Authorities were engaged.

The disposal freeze also covers control records which may identify relevant records such as registers of files, card and electronic indexes of files and records, metadata identifying specific records in databases and other digital business systems.

The disposal freeze covers records in all formats, including paper files and documents, microfilm and magnetic tapes, audio and visual recordings, photographs and records created and stored digitally (including information in relevant current and legacy databases and digital business systems).

All records in digital formats, including information in databases and other digital business systems, must be maintained with all the metadata necessary to support retrieval and access to authentic and reliable information.

Duration

The disposal freeze is in force from 1 January 2016 until 31 December 2030. Notification will be issued if it is necessary to further extend the disposal freeze.

Action required

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

1. ensure that all staff responsible for records management are informed about this disposal freeze;
2. review the records categories in Schedule 1 and conduct a risk assessment to:
 - determine if staff, contractors or records service providers have any records due or overdue for destruction that come within the scope of the disposal freeze;
 - check any records already proposed for destruction are not covered by the disposal freeze;
3. identify and retain relevant existing and future records subject to the disposal freeze or apply a broader freeze on all records likely to contain relevant material.

Impact

The processing, reviewing, storage costs and licence fees arising from the implementation of this disposal freeze will be borne by the agencies or other agents or people who hold the records.

Enquiries

For inquiries about this disposal freeze, please contact the Agency Service Centre from the NAA website at naa.gov.au or (02) 6212 3610.

Issued by

Anne Lyons
Assistant Director-General
National Archives of Australia
15 December 2015

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Schedule 1

Meaning of personnel files, superannuation files and other records of individuals

Where this disposal freeze refers to 'personnel, superannuation, workers compensation or other records of individuals', it applies to records for all Australian Public Service (APS), Defence Force, other Commonwealth entity and Approved Authority staff who were:

- born after 1 January 1895; and
- in such employment at any time between 1 January 1960 and 31 December 1999;
- regardless of whether the employee was a permanent, temporary or exempt employee; is a current employee or a former employee; is living or deceased; or was employed under the Public Service Act or other legislation.

Categories of records subject to the disposal freeze

The categories listed below are most likely to contain relevant records.

1. Personnel files and other records of individuals relating to:

- superannuation (including records about provision of information about superannuation (eg training, pamphlets, memos); eligibility to join; requests to join; applications to join (including application forms); certification of likelihood of future employment; acceptance into superannuation; contribution history; choices elections of superannuation scheme such as the Commonwealth Superannuation Scheme (CSS) or Public Sector Superannuation Scheme (PSS); receipt of benefits; and rollover or preservation of benefits;
- commencement and cessation of employment;
- service history;
- salary history;
- terms, conditions and benefits of employment;
- supervisory responsibilities;
- medical records prepared for superannuation purposes (but not including x-rays);
- leave records (including leave cards, leave summaries, leave applications and leave approvals) which are held on personnel files;
- records of disciplinary action or other performance issues which are held on personnel files;
- claims or compensation for invalidity for work (including Comcare records);
- deductions from salary for private superannuation policies.

It is expected that, in most cases, documents of the type listed above will be kept on individual personnel files and that personnel files will need to be retained in their entirety. Where documents of the type listed above are kept separately to personnel files, those documents will also need to be retained.

It may be more convenient for agencies to implement a broader freeze on all records likely to contain relevant material than to identify only those records that are subject to the freeze and withhold them from destruction. For example, an agency could cease destruction of all personnel and workers' compensation records, rather than just ceasing destruction of records that come within the date ranges captured by this notice (referred to above).

2. Superannuation case files of individuals, including records relating to:

- eligibility to join superannuation;
- certification of likelihood of future employment;
- joining superannuation, including requests and applications to join, processing of applications, acceptance into superannuation;
- medical examinations for superannuation purposes (not including x-rays);
- history of financial contributions;
- choices or elections related to superannuation (eg CSS or PSS);
- receipt, rollover or preservation of benefits;
- estimates of value of benefits and different benefit types;
- training or information sessions available to the individual.

Commonwealth superannuation is currently administered by Pillar Administration on behalf of the trustee, Commonwealth Superannuation Corporation (CSC). Superannuation records of individuals will be held by Pillar Administration, but documents within this category may also be among personnel files and agency records, such as files containing correspondence with the predecessors to Pillar Administration and CSC, which include:

- Comsuper;
- 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, the Superannuation Board);
- Defence Force Retirement Benefit Section, Defence Division, Department of the Treasury.

3. Policy records, administrative records, delegations and instruments relating to superannuation

This is a broad category which covers all records that show how each Commonwealth entity and Approved Authority dealt with superannuation. It includes documents of each Commonwealth entity and Approved Authority relating to:

- Dissemination of information about superannuation to employees (including at induction, terms and conditions booklets, forms, pamphlets, notices, in pay packets, etc);
- Dissemination of information and training when the CSS was introduced in 1976 and when the PSS was introduced in 1990;
- Training and instruction provided to staff (including personnel, human resources and industrial officers) in how to deal with superannuation matters, such as responding to staff enquiries about eligibility, processing applications to join superannuation, processing membership, dealing with staff exit from superannuation (including training sessions, manuals and guidance in how to complete forms);
- Certification of likelihood of future service or permanent appointment for people who applied to join superannuation, including delegations of this function and policies relating to exercise of this delegation;
- Superannuation processes:
 - within the Commonwealth; and
 - between the Commonwealth and Approved Authorities;including processing applications to join superannuation, submission of forms, arrangement of medical examinations for superannuation, deduction of superannuation contributions from salary payments, remittal of contributions and exchange of questions and answers.

For all entities, it is likely that these records will be contained within human resources, personnel department and industrial officer policy, administrative and delegation files.

For entities with a central coordinating role relevant to superannuation – such as the Commonwealth Superannuation Corporation, the Australian Public Service Commission, the Treasury and the Department of Finance (and their predecessors) – it is likely that they will have a broad range of records in this category. Records which show how these central entities interacted with other entities are important in showing what information was available to staff within entities. For example, records which show the Australian Government Retirement Benefits Office circulated memos about eligibility for superannuation to all agencies, helps to assess whether or not it is likely that an employee was told the wrong thing about their eligibility for superannuation.

4. Policy and administrative records relating to staffing of Approved Authorities in the period 1 January 1960 to 31 December 1999

There were a large number of Approved Authorities for superannuation purposes (see list in Schedule 3). The Approved Authorities were staffed in a number of different ways:

- some Approved Authorities were able to employ their staff directly (under the Approved Authority's establishing legislation). Where this happened, it was often a requirement that the Australian Public Service Commission or its predecessors had to approve the terms and conditions on which staff were engaged;
- some Approved Authorities were staffed with people engaged under the *Public Service Act*. For example, this happened if staff were seconded or borrowed.

The aim of this category is to capture high level documents explaining how Approved Authorities were staffed and how staff were managed. This can be relevant in a claim to working out who employed the claimant and the representor.

It is likely that records in this category are held by the Australian Public Service Commission and by each Approved Authority.

It is also possible that records in this category are held by the portfolio agency (or its successor) from which functions and staff were transferred when an Approved Authority was established.

For example, the Capital Territory Health Commission (an Approved Authority) was created in 1975. The Commission could employ its own staff, but it also had staff employed under the Public Service Act. Records relating to these staffing arrangements might now be held by the ACT Government (which is the successor to the Capital Territory Health Commission) and by the Commonwealth Department of Health.

5. Records in categories 1 to 4 above which relate to ACT or NT entities, or to ACT or NT employees.

Many ACT Public Service (ACTPS) and Northern Territory Public Service (NTPS) employees in the relevant period were formerly Commonwealth employees whose employment was transferred to the Territories. It is likely that the employees' personnel files will contain records that document their Commonwealth employment.

Records still held by the Commonwealth that relate to entities which are now the responsibility of the Territories, to ACTPS employees who were formerly APS employees or to NTPS employees who were formerly APS employees are covered by this disposal freeze.

The Commonwealth will make separate arrangements with the governments of the ACT and the Northern Territory concerning records in categories 1 to 4 that those governments hold.

Schedule 2

Interaction of this disposal freeze and General Records Authority 31

This Schedule explains the limited circumstances in which source records covered by the freeze can be destroyed in accordance with [General records authority 31 'Destruction of source or original records after digitisation, conversion or migration' \(GRA 31\)](#).

This disposal freeze permits the destruction of source records which have been copied, digitised, converted or migrated in accordance with GRA 31 only if written confirmation of certain matters has first been obtained from the Department of Finance and provided to National Archives.

Unless this process has been followed, this disposal freeze specifically excludes the application of GRA 31.

The Commonwealth has obligations (including those imposed by courts) to keep relevant source records covered by this disposal freeze if the records are relevant to actual or likely claims.

The Department of Finance (which is the agency responsible for dealing with *Cornwell*-type claims), or its successor, is best placed to determine whether source records are relevant to actual or likely claims. It is for this reason that Finance's written confirmation must be obtained before any source records covered by this disposal freeze can be destroyed in accordance with GRA 31.

GRA 31 permits the destruction of original or source records that have been copied, digitised, converted or migrated subject to a number of exclusions and conditions. There are exclusions and conditions that are potentially relevant to *Cornwell*-type superannuation claims:

Exclusion 2 Records subject to a specific legal or administrative requirement to retain the record in its original format, including:

- a) a legislative requirement; or
- b) a government directive.

Condition 2 Agencies must consider the risks before destroying records that are likely to be required as evidence in:

- a) a current judicial proceeding; or
- b) a judicial proceeding that is likely to commence.

In many cases Finance will be able to inform agencies that the destruction of source records poses no difficulty for *Cornwell*-type superannuation claims. Agencies are encouraged to approach Finance early if they are considering whether they can dispose of source records covered by this disposal freeze under GRA 31.

Process for the use of GRA 31 for records covered by this disposal freeze

A person, agency or other agent who holds records may only destroy original or source records covered by this disposal freeze that have been copied, digitised, converted or migrated in accordance with GRA 31, in consultation with National Archives as appropriate, if the agency has:

- (a) Obtained confirmation in writing from the responsible officer within the Department of Finance that:
 - (i) Finance is not aware of any specific legal or administrative requirement (such as a court order for discovery) arising in connection with *Cornwell*-type claims to retain the records in their original format (per Exclusion (2) of GRA 31); and
 - (ii) Finance does not regard it as likely that the record may be required as evidence in a current *Cornwell*-type judicial proceeding or a future *Cornwell*-type judicial proceedings that is likely to commence (per Condition (2) of GRA 31); and
- (b) Provide a copy of the Department of Finance's written confirmation to National Archives.

It remains the responsibility of the holder of the records to ensure that the exclusions and conditions in GRA 31 that relate to any other circumstances are observed.

To request confirmation in writing from the Department of Finance, the holder of the records should contact the responsible officer at the Department of Finance (Risk, Insurance and Special Claims Branch (Comcover)) by email, superclaims@finance.gov.au. Holders of records are encouraged to contact Finance well before commencing the process of copying, digitisation, conversion or migration of records.

To provide a copy of the Department of Finance's written approval to National Archives, agencies should contact the Archives' Agency Service Centre from the NAA website at naa.gov.au or (02) 6212 3610.

Schedule 3

List of Approved Authorities

This Schedule lists entities that have been 'approved authorities' for the purposes of the *Superannuation Act 1922* (Cth), the *Superannuation Act 1976* (Cth) or the *Superannuation Act 1990* (Cth). Records of approved authorities are covered by this disposal freeze.

Each approved authority is listed under the name of the current Commonwealth Department or Territory Government that is the superior agency (or the most likely successor to the superior agency) for the approved authority.

It is possible that the superior agency or successor superior agency for an approved authority will change during the period of this disposal freeze. It is also possible that an approved authority's records may be held by one or more different entities. Some of these approved authorities ceased to exist many years ago and it is not always clear who might now hold relevant records.

The number of approved authorities is likely to increase during the period of this disposal freeze. Records of other approved authorities not listed below are still covered by the disposal freeze. Record holders can check with the Department of Finance if they need clarification as to whether an entity is an approved authority.

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, superior agencies and successor superior agencies in retaining any existing records that relate to the matters covered by this freeze.

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.

Attorney-General's Department
High Court of Australia
Law Courts Limited
Department of Agriculture and Water Resources
Australian Apple and Pear Board
Australian Canned Fruits Board
Australian Canned Fruits Corporation
Australian Dairy Produce Board
Australian Egg Board
Australian Fisheries Management Authority
Australian Honey Board
Australian Meat and Livestock Corporation
Australian Meat and Livestock Research and Development Corporation
Australian Meat Board

Australian Pork Corporation
Australian Wheat Board
Australian Wine and Brandy Corporation
Australian Wine Board
Australian Wool Board
Australian Wool Bureau
Australian Wool Corporation
Australian Wool Research and Promotion Organisation
Australian Tobacco Board
Cotton Research and Development Corporations
Dairy Research and Development Corporation
Dried Fruits Control Board
Fisheries Research and Development Corporation
Flax Commission
Forest and Wood Products Research and Development Corporation
Grains Research and Development Corporation
Horticultural Research and Development Corporation
Land and Water Resources Research and Development Corporation
Meat Research Corporation
National Registration Authority for Agricultural and Veterinary Chemicals
Pig Research and Development Corporation
Pork Promotion Committee
Rural Industries Research and Development Corporation
Sugar Research and Development Corporation
Wool Research and Development Corporation
Department of Communications and the Arts
Adelaide Symphony Orchestra Pty Ltd.
Australian Broadcasting Commission
Australian Broadcasting Corporation
Australian Film Commission
Australian Film Development Corporation
Australian Foundation for Culture and the Humanities Ltd
Australian Postal Corporation
Australian Telecommunications Corporation
Film Australia Pty Limited

Melbourne Symphony Orchestra
OTC Limited
Overseas Telecommunications Commission (Australia)
Queensland Orchestras Pty Limited
Screen Australia
Special Broadcasting Service
Sydney Symphony Orchestra Holdings Pty Limited
Symphony Australia Holdings Pty Ltd.
Tasmanian Symphony Orchestra Holdings Pty Limited
Telstra Corporation Limited
West Australian Symphony Orchestra Holdings Pty Ltd
Department of Defence
Aerospace Technologies of Australia Pty Ltd
Australian Defence Industries Pty Ltd
Board of Management of the Australian War Memorial
Trustees of the Services Canteens Trust Fund
University College, being the college established by the University of New South Wales within the Australian Defence Force Academy
Department of Education and Training
Australian Maritime College
Australian National Training Authority
Australian National University
Canberra Institute of the Arts
Council of the Canberra University College
National Training Board
Department of Employment
Australian Stevedoring Industry Authority
Construction Industry Development Agency
Department of Environment
NEPC Service Corporation
Department of Finance
Commonwealth Accommodation and Catering Services Limited
Commonwealth Funds Management Limited
Commonwealth Hostels Limited
Parliament House Construction Authority

Superannuation Fund Investment Trust
Department of Foreign Affairs and Trade
Australian Overseas Projects Corporation
Export Finance and Insurance Corporation
Export Payments Insurance Corporation
Australian Tourist Commission
Australian Trade Commission
Tourism Australia
Department of Health
Australian Hearing Services
Australian Institute of Sport
Australian Sports Commission
Australian Sports Drug Agency
Commonwealth Serum Laboratories Commission
Coselco Mimotopes Pty. Ltd
Health Services Australia Limited
Medibank Private Limited
Nuclear Safety Bureau
Private Health Insurance Administration Council
Private Health Insurance Complaints Commissioner
Department of Industry, Innovation and Science
Anglo-Australian Telescope Board
ANL Limited
Australian Atomic Energy Commission
Australian Coastal Shipping Commission
Australian Industry Development Corporation
Australian Marine Science and Technology Limited
Australian Nuclear Science and Technology Organisation
Commonwealth Scientific and Industrial Research Organization
Energy Research and Development Corporation
National Standards Commission
Snowy Mountains Engineering Corporation
Snowy Mountains Engineering Corporation Limited
Snowy Mountains Hydro-electricity Authority
Department of Infrastructure and Regional Development

Airservices Australia
Australian Airlines Limited
Australian Aluminium Production Commission
Australian Maritime Safety Authority
Australian National Airlines Commission
Civil Aviation Authority
Civil Aviation Safety Authority
Commonwealth Bureau of Roads
National Capital Development Commission
Department of Prime Minister and Cabinet
Aboriginal and Torres Strait Islander Commercial Development Corporation
Aboriginal Hostels Limited
Aboriginal Corporation of the National Aboriginal Conference
Aboriginal Development Commission
Advisory Council for Inter-government Relations
Australian Institute of Aboriginal Studies
Australian Institute of Multicultural Affairs
Indigenous Land Corporation
National Aboriginal Sports Foundation Aboriginal Corporation
Department of Social Security
Institute of Family Studies
The Treasury
Housing Loans Insurance Corporation
National Companies and Securities Commission

Australian Capital Territory
ACT Institute of Technical and Further Education
ACTEW Corporation Limited
Australian Capital Territory
Australian Capital Territory Electricity and Water Authority
Australian Capital Territory Electricity Authority
Australian Capital Territory Health Authority
Australian International Hotel School
Calvary Hospital ACT Incorporated
Canberra College of Advanced Education

Canberra Commercial Development Authority
Canberra Community Hospital Board
Canberra Hospital Management Board
Canberra Showground Trust
Canberra Theatre Trust
Capital Territory Health Commission
Legal Aid Commission (ACT)
Milk Authority of the Australian Capital Territory
National Exhibition Centre Trust
Totalcare Industries Limited
University of Canberra
University of Canberra sponsored by Monash University

Northern Territory
Aboriginal Areas Protection Authority
Aboriginal Sacred Sites Protection Authority
Alice Springs College of Technical and Further Education
Batchelor College
Centralian College
Conservation Commission of the Northern Territory
Darwin Community College
Darwin Institute of Technology
Fire Service of the Northern Territory
Housing Commission constituted under the Housing Ordinance 1959-1969 of the Northern Territory of Australia
Katherine Rural College
Menzies School of Health Research
Museums and Art Galleries Board established by the Museums and Art Galleries Ordinance 1965-1970 of the Northern Territory of Australia
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
Power and Water Authority
Trade Development Zone Authority
University College of the Northern Territory
University Planning Authority

Schedule 4

Background to Cornwell superannuation claims and relevance of the documents and dates referred to in the disposal freeze

A large number of claims have been made against the Commonwealth by people who allege they were given the wrong information about their eligibility to join a Commonwealth superannuation scheme. The claimants say that they relied on the wrong information and suffered financial loss as a consequence. These claims are generally referred to as *Cornwell*-type superannuation claims, following a decision by the High Court of Australia in one such claim by Mr Cornwell.²

The Commonwealth is now dealing with a number of additional claims (including litigated, unlitigated and Act of Grace claims). New claims continue to be made.

Details of claims

The claims typically relate to events that occurred between 1960 and 2000 and involve:

- a claimant alleging that they were told the wrong information about their eligibility to join a Commonwealth superannuation scheme;
- one or more respondents who are alleged to have given the wrong information;
- sometimes witnesses or other people connected with a claim are involved.

The claims are usually made by people who had a choice about whether to join a Commonwealth superannuation scheme. For many Commonwealth employees, it was compulsory to join superannuation. However, the following employees generally had a choice about whether to apply to join (membership criteria changed over time):

- temporary (now 'non-ongoing') or exempt (for industrial staff) *Public Service Act* employees; and
- employees of some Commonwealth authorities which were Approved Authorities for *Superannuation Act* purposes (a list of Approved Authorities is at Schedule 3).

Further information about eligibility for Commonwealth superannuation schemes is below.

Significance of dates within the disposal freeze

The disposal freeze contains some date ranges. The significance of the dates in the disposal freeze is as follows:

- 'born in or after 1895' - people born in 1895 would have been age 65 (a common retirement age) in 1960. Most claims relate to events after 1960. People born in or after 1895 would have been of working age for at least some of the time since 1960. These people could be claimants, representors, witnesses or other people connected with claims. Even if these people are now deceased, their estate might make a claim.
- 'in employment at any time between 1 January 1960 and 31 December 1999' - this is the period during which events giving rise to claims generally occurred.

² *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) 229 CLR 519 (20 April 2007).

Nature of documents required

The claimants, the Commonwealth and other parties need access to historical records of the type covered by this disposal freeze in order to deal with claims.

Claimants, representors and witnesses might have worked in any area of the Commonwealth or an Approved Authority during the relevant period. When a person moved between agencies, their personnel records usually moved with them. Therefore, it is necessary for all agencies to be covered by the disposal freeze, not just those workplaces which are known locations from which claims arise. Because of movements of staff between the APS and the Defence Force, the records of military personnel may contain relevant information.

Some *examples* of the relevance of categories of documents covered by the disposal freeze are set out in the table below. This is not an exhaustive description of the relevance of categories of documents.

Type of document	Example of relevance of type of documents
Individual personnel files of claimant (Category 1 of disposal freeze)	Relevant to: whether the claimant was eligible for superannuation; whether the claimant would have applied for and been admitted to superannuation; calculating the value of the claim (if successful); whether the claim is commenced within the limitation period.
Superannuation records of claimant (Category 2 of disposal freeze)	Relevant to: whether the claimant would have been admitted to superannuation; calculating the value of the claim.
Individual personnel files and superannuation records of respondent (Categories 1 and 2 of disposal freeze)	Relevant to: what the respondent knew about superannuation and whether the representation occurred; whether the respondent was someone the claimant was entitled to rely on.
Policy records such as dissemination of information about superannuation, training about superannuation and processing of applications to join superannuation (Category 3 of disposal freeze)	Relevant to: what was known in a particular workplace about superannuation and, therefore, whether the representation occurred as alleged; what a particular workplace's practices were and, therefore, whether the claimant would have been admitted to superannuation.
Policy records relating to staffing of Approved Authorities (Category 4 of disposal freeze)	Relevant to: whether claimants were eligible to join Commonwealth superannuation (there were different eligibility criteria for employees of the Commonwealth and employees of Approved Authorities); whether a representor was someone the claimant was entitled to rely on.

Eligibility for Commonwealth superannuation

Whether or not a person could join a Commonwealth superannuation scheme was governed by legislation and changed from time to time. The eligibility criteria often involved a period of prior service and certification of likelihood of a period of future service. For example, to be eligible to join the CSS in mid-1976, a temporary employee generally needed to have completed one year of prior service and be certified as likely to continue in employment for at least three years. A medical assessment was also required.

The main Commonwealth schemes and relevant sections regarding eligibility for temporary and exempt employees were as follows:

Scheme name	Timeframe and Act	Eligibility sections most relevant to claims
'1922 Act Scheme' and 'Provident Account Scheme'	Open to new members between 1922 and mid 1976. <i>Superannuation Act 1922 (Cth)</i>	Subsections 4(4), 4(5) and 4(6) deem holders of statutory offices, persons employed other than in a permanent capacity and employees of Approved Authorities to be employees under the Act.
Commonwealth Superannuation Scheme (CSS)	Open to new members between mid-1976 and mid 1990 <i>Superannuation Act 1976 (Cth)</i>	Sections 11, 12, 13 and 14 concern requests by temporary employees, statutory office holders and Approved Authority employees to be treated as eligible employees.
Public Sector Superannuation Scheme (PSS)	Open to new members between mid-1990 and mid-2005 <i>Superannuation Act 1990 (Cth)</i>	Sections 7 and 8 concern elections by statutory office holders and temporary employees of the Commonwealth or Approved Authorities to become members of the PSS.

Further detail about eligibility provisions within each Commonwealth scheme is available on the Department of Finance website.

The Defence Force superannuation schemes have been:

- Defence Force Retirement and Death Benefit Scheme (DFRDB Scheme) which was open to new members between 1973 and 1991 (*Defence Forces Retirement Benefits Act 1948 (Cth)* and *Defence Force Retirement and Death Benefits Act 1973 (Cth)*).
- Military Superannuation Benefit Scheme (MilitarySuper) which was open to new members from 1991 (*Military Superannuation and Benefits Act 1991 (Cth)*).