

Our reference: 2012/2913

**Notice of Disposal Freeze:**

**Records related to allegations of abuse in Defence**

To: Department of Defence; Australian Defence Force (ADF); Defence Materiel Organisation; and all other organisations that form part of the Defence Organisation;  
Department of Veterans' Affairs and related organisations, in particular:  
    Military Rehabilitation and Compensation Commission;  
    Repatriation Commission;  
    Repatriation Medical Authority;  
    Veterans' Review Board;  
Administrative Appeals Tribunal;  
Australian Federal Police;  
Australian Human Rights Commission;  
Australian National Audit Office;  
Comcare;  
Defence Force Discipline Appeal Tribunal;  
Department of Finance and Deregulation  
    *(in relation to administration of the Commonwealth discretionary compensation schemes and mechanisms);*  
Department of Foreign Affairs and Trade  
    *(in relation to Defence personnel at DFAT-managed overseas posts);*  
Office of the Australian Information Commissioner;  
Office of the Commonwealth and Defence Force Ombudsman;  
Office of the Commonwealth Director of Public Prosecutions;  
Office of the Inspector-General of Intelligence and Security; and  
Office of the Merit Protection Commissioner.

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This document is to notify the agencies listed above (**affected agencies**) and other agents or people in possession of Commonwealth records (**records**) that I have imposed a disposal freeze on Commonwealth records that relate to allegations, reporting, investigation and consequences of sexual and other forms of abuse in the Defence Organisation and their handling and response, including any remedial actions, by Defence and other affected agencies. The National Archives of Australia has determined that a disposal freeze is necessary to ensure that relevant records are protected and available for future reference and accountability purposes and to protect the rights and entitlements of stakeholders.

### **Background**

On 11 April 2011 the Minister for Defence, the Hon Stephen Smith MP, announced an external review of allegations of sexual and other forms of abuse that were raised following a 'Skype' incident at the Australian Defence Force Academy. In response, the Secretary of the Department of Defence engaged the law firm DLA Piper to review allegations of sexual and other forms of abuse within the Defence Organisation over a number of years and to make recommendations for further action (**the Review**).

The Review comprised two phases: *Phase 1* was to review all relevant allegations to make an initial assessment of whether these allegations and other related matters were appropriately managed and to recommend further action to the Minister. *Phase 2* is expected to continue investigation of these issues and provide oversight of implementation of *Phase 1* recommendations by Defence. It will also review Defence's processes for assessing, investigating and responding to allegations of sexual and other forms of abuse in order to consider and make appropriate recommendations on any systemic issues identified by both phases.

As a result of *Phase 1*, on 10 July 2012 the Minister for Defence publicly released the *Report of the Review of allegations of sexual and other abuse in Defence: Facing the problems of the past (DLA Piper Report or the Report)*. The Report looks at the causes, handling and consequences of abuse that occurred in the Defence Organisation from the 1950s up to 2011.

The Australian Government's formal response to *Phase 1* findings and recommendations will determine the focus of *Phase 2*. Until such response is made and further actions are determined by the Government, relevant records that may inform the work of the Review and support any actions resulting from the Review need to be protected from destruction.

### **Purpose**

The DLA Piper Report specified continued access to relevant Commonwealth records by the Review as crucial to its successful outcome. The Report outlines the process of access to records by the Review during *Phase 1* and states that:

*It can be expected that whoever is conducting Phase 2 will need access to many Defence documents, some dating back many years. Prompt co-operation and complete responses will be required from all*

*relevant areas of Defence...for there to be a successful outcome of the Review.*

(DLA Piper Report, Appendix 2 *Review process*, 'Requests for information from Defence', p. 246)

To facilitate the conduct of a full and proper review of abuse in the Defence Organisation, the National Archives has identified the scope of records potentially relevant to the Review and its outcomes and reconsidered the retention requirements for these records. Retention of the records will protect the rights and entitlements of all stakeholders including victims of abuse, their supporters and other individuals or groups that may have been affected, as well as the rights and entitlements of other claimants and respondents. The National Archives has also identified affected agencies that may have records which are relevant to the Review and any subsequent actions by the Australian Government.

It is likely that some of the relevant records of the affected agencies are currently eligible for legal destruction under general and agency-specific records authorities issued by the National Archives or using a normal administrative practice (NAP). The purpose of this disposal freeze is to prevent any such destruction and to ensure that all relevant extant and future records are available for reference.

The decision to impose this disposal freeze was made in consultation with the Defence Organisation.

### **Authority**

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

### **Agencies affected**

This disposal freeze applies to all affected agencies identified in this Notice and to other agents or people in possession of relevant Commonwealth records. It also applies to relevant records of defunct or predecessor agencies owned by the affected agencies including those in the care of the National Archives or the Australian War Memorial.

### **Records affected**

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

In broad terms, the disposal freeze covers records relating to allegations, reporting, investigation and handling of sexual and other forms of abuse in the Defence Organisation, as defined in the DLA Piper Report where:

- 'allegations of abuse' refers to allegations of abuse by Defence personnel in connection with their workplace or the conduct of their duties against
  - other Defence personnel,
  - non-Defence personnel on Defence premises or
  - civilian contractors to Defence,but excluding allegations of domestic abuse even if occurring in a residence on a Defence base;
- 'Defence personnel' is to be taken to mean persons who are or were part of the Defence Organisation: current and former ADF members, including cadets and reservists; Defence public

service (APS) employees; and Australian Defence Force Cadets (also referred to as School Cadets in the Report);

- categories of abuse include but are not limited to:
  - sexual and physical assault, including threats
  - harassment, including of a sexual nature
  - bullying, intimidation and other such unacceptable behaviour
  - discrimination
  - hazing/initiation
  - mismanagement of complaint handling
  - other criminal and non-criminal offences which may result in personal physical or mental injury.

The disposal freeze also covers records related to any consequences of the abuse for the victims, complainants or respondents (for example, the impact on their health, career or financial and personal situation), as well as records of response to allegations, including any remedial actions, by Defence and other affected agencies.

These records may be individual client and case files, policy and other administrative records of Defence and other affected agencies, records of legal and disciplinary proceedings, reports and inquiries related to matters of abuse and allegations of abuse in Defence (see *Schedule 1* for specific categories). This also includes agency records and information management control records which may identify records relevant to the disposal freeze such as registers of case files, card and electronic indexes of files and records, metadata elements identifying specific records in the 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 digitally, including but not limited to:

*emails, documents created by word processing and other office applications, residing in designated document and records management systems, on shared work group spaces, on shared, local or personal drives or in any other locations/media, such as thumb drives, laptops and other portable devices provided for official use.*

The freeze also covers information in all relevant current and legacy databases and digital business systems such as those used for management of finance and human resources, client relationship or business-specific workflow and case management systems. It also applies to records which have not been captured into formal recordkeeping systems, including personal notebooks and unregistered files or folders.

All records in digital formats, including information in databases and other digital business systems, must be maintained with all the necessary metadata in order to preserve the ability to access, search and display the information as it was originally created and maintained.

**The disposal freeze suspends the National Archives of Australia's permission to destroy any relevant records that could otherwise be legally destroyed under current records authorities issued by the National Archives and designates any relevant records as not suitable for destruction through a normal administrative practice (NAP).**

### ***Records authorities affected***

This notice has the effect of suspending, for the period of the freeze, the operation of disposal classes relevant to the records described in *Schedule 1*. Further information on records authorities that may be relevant to records that are covered by the disposal freeze is included in *Schedule 2*.

The disposal freeze applies to all records that fall within the categories described in *Schedule 1*, not just to records covered by the records authorities identified in *Schedule 2*.

Records authorities identified in *Schedule 2* may still be used to dispose of records that are not covered by the freeze, provided that no records covered by the freeze are destroyed.

### ***Normal administrative practice (NAP)***

Under the terms of this disposal freeze agencies should not destroy any records that may be relevant to the freeze by applying a normal administrative practice (NAP). Any existing NAP policies and procedures in affected agencies should be amended appropriately to this effect.

### ***Duration***

The disposal freeze will take effect on **22 October 2012** and will be in force until further notice by the National Archives.

### ***Action required***

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

1. Ensure that all staff and contractors are informed of the disposal freeze.
2. Ensure that all staff responsible for records and information management, legal affairs, human resources management and information and communication technology (ICT) understand the full impact of the freeze.
3. Determine if they or their contractors and records service providers have any records, including information in digital business systems and databases, due or overdue for destruction that come within the scope of the disposal freeze.
4. Withhold from destruction any such records identified.
5. Retain the records for the duration of the disposal freeze.

Relevant records must be retained by the agency for the period of the disposal freeze. These records will not be accepted for transfer to the Archives, unless they are designated as 'Retain as National Archives' (RNA) in a records authority issued by the National Archives.

This disposal freeze does not require agencies to conduct detailed searches for all records that may be subject to this disposal freeze. Agencies have the option either to identify and retain the particular records covered by the freeze, or to implement a broader freeze on all records likely to contain relevant material. Any records proposed for destruction must be reviewed to ensure they are not covered by the disposal freeze.

### ***Impact***

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

### ***Inquiries***

For inquiries about this disposal freeze, please contact the Agency Service Centre at [recordkeeping@naa.gov.au](mailto:recordkeeping@naa.gov.au) or (02) 6212 3610.

Issued by  
David Fricker  
Director-General  
National Archives of Australia  
19th October 2012

### **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. This list is not exhaustive and should be used as guidance only.

Agencies may find it more convenient to implement a broader freeze on all records likely to contain relevant material than to identify particular records that are subject to the freeze and withhold them from destruction.

**1. All past and current Defence personnel (see *Records affected* section of this Notice for definition) files and other records of individuals, as they may include those involved in allegations as victims of abuse and/or complainants, witnesses, respondents and alleged perpetrators, including but not limited to:**

- personnel records documenting service history, career, health and wellbeing management, including information from relevant databases and other digital business systems, eg PMKeyS;
- training files and other related records of officers, recruits, cadets and apprentices;
- veterans' case files and records;
- medical, legal or any other client files and records of Defence personnel;
- relevant records of unit case officers;
- reports received from medical practitioners, allied health professionals, psychologists, social workers, legal officers, counsellors or chaplains in relation to individuals or particular incidents.

**2. Records of the relevant parts of Defence and other affected agencies documenting the work of the military justice system, including disciplinary processes and mechanisms, administrative system of inquiries, sanctions and grievance and complaint handling, in relation to reporting, management and investigations of allegations of abuse and related matters in Defence, including but not limited to:**

- incidents reported to and investigations conducted by the Australian Defence Force Investigative Service, military police and other parts of Defence, including cases which did not result in any penalties;
- cases considered before the Australian Military Court, courts martial, Defence Force Magistrate, or summary authorities;
- databases and other digital business systems, including legacy systems, that record performance, conduct issues and complaints relevant to abuse and / or unacceptable behaviour, such as Defence Policing and Security Management System, Fairness and Resolution Branch Unacceptable Behaviour database, Australian Defence Force Administrative Inquiry Tracking System etc;
- individual and particular cases of complaints, allegations, reviews and appeals addressed by Defence internal administrative mechanisms, eg Defence Whistleblower Scheme, Fairness and Resolution Branch or service tribunals, and those considered by external organisations such as the Defence Force Discipline Appeal Tribunal, the Ombudsman, Australian Human Rights Commission, Privacy, Information and/or Merit Protection Commissioners and/or Administrative Appeals Tribunal.

**3. Records documenting internal and external reviews, reports, inquiries, surveys and other investigations of Defence in relation to matters of abuse or allegations of abuse, unacceptable behaviour, military justice system, treatment of minors, young people or females and related matters, including but not limited to:**

- reports, submissions to, records of investigations, evidence collected or provided, findings and other records of and/or related to
  - such Defence reviews, reports and inquiries as (the list is indicative only and does not purport to list all relevant inquiries):
    - DLA Piper Review *Phase 1* (2011) and *Phase 2*;
    - *Report of the Board of Inquiry Appointed to Investigate the Trial and Punishment of Offences Against Military Law and the Administration of Places of Confinement of Military Offenders* (Reed Report 1946);
    - *Report of the Committee of Enquiry into the Royal Military College* (Fox Report 1970);
    - Investigation into allegations of initiation practices, physical violence and bullying at *HMAS LEEUWIN* and on board *HMAS SYDNEY* (Rapke Inquiry 1971);
    - *Dealing with a changing work environment: the issue of sexual harassment in the ADF: report prepared for the Assistant Chief of Defence Force Personnel* (Bryson Report 1994);
    - Review into policies and practices to deal with sexual harassment and sexual offences in the Australian Defence Force Academy (Grey Review and Northwood investigation 1998);
    - Inquiry into the learning culture in ADF schools and training establishments (Learning Culture Inquiry 2006);
    - HMAS Success Commission of Inquiry (2011);
  - all relevant Commonwealth and Defence Force Ombudsman's reviews and inquiries;
  - all relevant committees and inquiries of the Australian Parliament;
  - contributions to similar State and Territory inquiries, eg NSW Inquiry into Bullying of Children and Young People 2009; and
  - reviews, reports and inquiries into the relevant matters by any other affected agencies;
- all records of Defence requested and used by the internal and external inquiries;
- data of any current and past surveys and questionnaires related to past alleged abuse, harassment and other related matters, eg cadets' interviews conducted during the investigations of 1983 allegations of bastardisation at the Royal Military College, the Sexual Experiences Questionnaire 1995, unacceptable behaviour surveys etc;
- records of and/or related to the subsequent Defence analysis and response to the findings of any relevant inquiry bodies.

**4. Records documenting cases of abuse and allegations of abuse in Defence referred to the civilian criminal law enforcement authorities and any consequent liaison between these agencies and Defence, including but not limited to:**

- cases referred to the Australian Federal Police, Commonwealth Director of Public Prosecutions and their State and Territory counterparts;
- any records of the affected agencies documenting liaison with Defence in relation to such cases.

**5. Records documenting career and health consequences of abuse experience for victims, other complainants and respondents and attempted and successful support and remedial action provided by the Government to affected individuals, including but not limited to:**

- records of the affected agencies documenting connection between the past abuse experiences of Defence personnel and their physical or mental health problems, such as post-traumatic stress disorder, elevated risk of suicide and/or drugs or alcohol abuse, including records of intervention and support;
- evidence of adverse career consequences for victims or those who reported the abuse and of attempted and successful redress by Defence and other affected agencies;
- evidence of support (for example, records of claims, assessments, reviews and appeals) for individuals under the military rehabilitation and compensation, veterans' entitlements, work health and safety and other relevant legislation in the form of medical treatment, counselling and the provision of other services and/or other benefits and compensation under the statutory compensation schemes and mechanisms as well as under the Commonwealth discretionary mechanisms such as the Scheme of Compensation for Detriment Caused by Defective Administration (CDDA) and Act of Grace or Ex gratia payments.

**6. Corporate policy and administrative records of Defence and other affected agencies relevant to the topics in all previous categories, including but not limited to:**

- final versions, and working papers in relation to preparing, issuing, implementation and review of the relevant Defence Instructions, Directives and DEFGRAMS, unit standing orders, policies, procedures, manuals, hot issues and ministerial briefs, implementation plans, codes of conduct, etc;
- correspondence and other advice to victims of abuse, other complainants and respondents in response to the allegations;
- records of steering committees overseeing any internal and external reviews and implementation of recommendations and reforms;
- design, management and review of Defence systems, mechanisms and processes for tracking, internally reporting on and responding to allegations of abuse;
- training schemes and programmes;
- design, management and review of past and present mechanisms available to Defence commanders and managers for tracking serial perpetrators and serial suspects of abuse;
- evidence of gathering and exchange of information between Defence, Department of Veterans' Affairs and other relevant agencies about abuse, including access to previous reports, identification of clusters of abuse and high-risk Defence environments;
- liaison with Defence veterans' representative bodies and consultative forums on matters of abuse;

- evidence of ADF response and implementation of recommendations of any reviews and inquiries, such as measures to improve the management of allegations, identification and action on systemic issues, training schemes etc.

**7. Operational unit and individual commanders', managers' and other ADF members' records which may contain evidence of abuse, allegations of abuse, unacceptable behaviour or other related matters, including but not limited to:**

- relevant Unit Standing Orders;
- field notebooks and commander diaries;
- log books;
- personal Occurrence Reports – Army Reserve;
- personal diaries, notes of meetings and discussions or correspondence, including electronic and online communications; and
- audio or visual recordings, photographs and other similar records which may contain evidence of abuse.

## **Schedule 2: Records authorities and practices relevant to the disposal freeze**

The purpose of this schedule is to assist agencies to understand which records authorities and practices may be relevant to records that are subject to the disposal freeze. It is not intended to be an exhaustive list. Relevant records covered by records authorities issued after this disposal freeze takes effect will also be subject to the freeze.

### **1. All agency-specific Records Authorities (RAs) and Records Disposal Authorities (RDAs) in use by the affected agencies**

### **2. General Records Authorities (GRAs)**

For relevant records covered by the following GRAs:

- *GRA 26: Advisory Bodies;*
- *GRA 27: Governing Bodies; and*
- *GRA 29: Public or Official Inquiries.*

### **3. Administrative Functions Disposal Authority (AFDA and AFDA Express)**

This includes predecessor records authorities and General Disposal Authorities (GDAs) issued by the National Archives of Australia, including:

- *GDA 20 – Records Common to Third Level Agencies: Offices Controlled by State or Regional Offices;*
- *GDA 18 – Administrative and other records common to most State/Regional Offices and Overseas Posts; and*
- *GDA 17 – All Staff and Establishment Records.*

### **4. Use of a normal administrative practice (NAP)**

Under the terms of this disposal freeze agencies should not destroy any records that may be relevant to the freeze by applying a normal administrative practice (NAP).