

Our reference: 2008/4112

To: All Commonwealth departments and authorities, and former authorities of the Commonwealth

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 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 from 1 January 2009 to 31 December 2010.

Background

Although individuals who were employed by the Commonwealth in a temporary (now non-ongoing) or exempt capacity (for industrial staff) were not required to join a superannuation scheme, there was provision under the relevant legislation for them to apply and be accepted as members. In April 2007 the High Court found the Commonwealth liable for damages after misleading advice about eligibility to join a scheme was given to one of these employees.¹ The Commonwealth is preparing for a number of additional claims.

The aim of the disposal freeze is to avoid the risk of losing crucial evidence for processing negligent misstatement claims arising from the decision in the Cornwell superannuation case litigation. 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 agencies and other agents or people in possession of Commonwealth records. This includes Commonwealth institutions as defined in the *Archives Act 1983* and bodies, such as companies, that have ceased to be authorities of the Commonwealth, but which still have possession or custody of Commonwealth records.

Records affected

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

In broad terms, the disposal freeze covers the personal history, salary history and superannuation contribution records of current and former Australian Public Service (or Commonwealth) staff who were employed at some stage as temporary, industrial or exempt employees. It covers policy and general correspondence records relating to the eligibility of staff for superannuation.

The disposal freeze applies to 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 2009 until 31 December 2010. 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 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 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.

Date of notice



Ross Gibbs
Director-General

8 December 2008

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 former and current APS or Commonwealth staff born in or after 1884:

- relating to service history, salary history, superannuation contribution history or eligibility of superannuation
- of temporary or industrial employees
- who did not contribute to a Commonwealth superannuation scheme or who only contributed during part of their service.

Notes

While this category is narrowly defined, temporary or industrial employee could later have become permanent officers. The records of the service, salary or superannuation contribution histories of these employees may have been kept together with later documents and transferred between agencies if the person was promoted or transferred. Potential claimants could have worked in any area of the Commonwealth at any time over the last 50 or more years. 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 from the period of the freeze or, alternatively, could cease destruction of all records that relate to the service history, salary history, superannuation contribution history, or eligibility for superannuation.

The scope of records affected by the disposal freeze includes employees born in or after 1884. This is because persons of such age may have been eligible to join a Commonwealth superannuation scheme, and their estates could potentially make claims.

A Commonwealth superannuation scheme includes the CSS, the PSS, DFRDB and MSBS. Temporary (now non-ongoing) employees were employees engaged for a specified term or for the duration of a specific task. Industrial employees were persons employed, for example, in trades and labouring occupations. 'During part of their service' means staff who were temporary employees before they became permanent employees.

Disposal authorities relevant to Category 1 are listed in Schedule 2.

2. Records of Comsuper and its predecessors relating to temporary and exempt (industrial) staff who did not contribute to a Commonwealth superannuation scheme or who only contributed during part of their service.

Notes

Predecessors of Commonwealth Superannuation Administration (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 Superannuation Board
- DFRB Section, Defence Division, Department of the Treasury.

Disposal authorities relevant to Category 2 are listed in Schedule 2.

3. All agencies' (and their predecessors') records of requests by staff about their superannuation status or requests to join a scheme.

Note

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.

4. Policy and administrative records of the Public Service Board, The Treasury, the Commonwealth Superannuation Board and their successors, including the Department of Finance and the Department of Finance and Administration, and Comcare, relevant to category 1 above.

5. 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 and statutory office holders 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 to become members of the PSS.

6. Records in the above categories held by the ACT Government and the Northern Territory Government, for example: where ACT Public Service and Northern Territory Public Service 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 formally APS employees are covered by this disposal freeze.

SCHEDULE 2:

Disposal authorities relevant to the disposal freeze

The purpose of this list is to assist agencies identify records that are subject to the disposal freeze.

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)

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

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

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.