

### Notice of Records Disposal Freeze for Records Relating to the Eligibility of Commonwealth Employees to Join Commonwealth Superannuation Schemes

The purpose of this document is to notify public sector organisations, which may be in possession of Commonwealth superannuation records, that there has been an extension of the disposal freeze placed on selected personnel and related superannuation records. These records may be needed in processing claims against the Commonwealth concerning eligibility of Commonwealth employees to join Commonwealth superannuation schemes.

#### Background

The freeze is to assist the Commonwealth government's investigation of superannuation liability claims received following the decision of the High Court in *Commonwealth v Cornwell* [2007] HCA 16 which found the Commonwealth liable for damages after misleading advice about eligibility to join a superannuation scheme was given to one of its employees.

The aim of the disposal freeze is to avoid the risk of losing crucial evidence for processing additional claims arising from this litigation. This is to protect the rights and entitlements both of the individuals who may bring claims and of the Commonwealth in defending or processing those claims.

An initial disposal freeze was issued by the Northern Territory Government at the request of the Commonwealth for the period 11 January 2007 – 15 August 2011. The disposal freeze was extended on 15 August 2011 until 31 December 2015.

The Northern Territory Government decision to extend the freeze on the disposal of Commonwealth superannuation records from until 31 December 2030 (and change the application of the disposal freeze) follows agreement by the NT Chief Minister to the request by the Commonwealth Department of Finance, the agency responsible for managing Cornwell type superannuation claims and the National Archives of Australia.

Please refer to Commonwealth Government disposal freeze for further detail, available at [Notice of Disposal Freeze: Post-Cornwell Superannuation Case Litigation – Processing of Additional Claims](#).

#### Authority

NT Archives Service and the NT Records Service issue this disposal freeze extension and change in accordance with Section 136B of the *Information Act*. Destruction of records covered by a disposal freeze is considered illegal disposal under Section 145 of the *Information Act*.

#### Agencies Affected

The disposal freeze applies to all public sector organisations which may be in possession of records of former Commonwealth Public Service staff.

## Records Affected

The disposal freeze covers the **personal history and superannuation contribution records** of former Commonwealth Public Service staff who were employed at some stage as permanent, temporary, industrial or exempt employees by Commonwealth Approved Authorities (for the list of Approved Authorities see **Schedule B** of the Commonwealth Disposal Freeze referred to above) .

These are effectively personnel records transferred from the Commonwealth Government to the Northern Territory Government after Self-Government in 1978 relating to staff who transferred at the time.

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 .
- policy and administrative records relating to superannuation;
- policy and administrative records relating to how staff of Approved Authorities were engaged.

The disposal freeze applies to records that could otherwise be destroyed under NT Government Records Disposal Schedules.

The disposal schedule likely to be affected is the [\*Records Disposal Schedule for Administrative Functions of the Northern Territory Government 2013/5\*](#).

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.

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.

Schedule A details the categories of records subject to the records disposal freeze.

The content of the extended freeze has been revised to:

- narrow the target dates of the freeze: date of birth of subject is now 1895 (was 1892); date of employment start is now 1960 (was 1942)
- extends the freeze to 2030
- change the structure and content of some of the records categories in schedule A, and reduce the number of records categories. This has the effect of extending the reach of this freeze in a limited way for certain types of personnel records.

## Duration

This disposal freeze is in force from 01 January 2016. The initial records disposal freeze was issued on 11 January 2007 until 15 August 2011. An extension was issued on 15 August 2011 until 31 December 2015. The current disposal freeze has been extended until 31 December 2030. A review of the requirement for the continuation of the disposal freeze will be undertaken prior to 31 December 2030. Public sector organisations will be notified by the NT Records Service if a further extension of the disposal freeze is authorised or if it will cease.

## Action Required

Public sector organisations should:

1. Notify all staff and other relevant parties (including third party service providers) responsible for the disposal of public records that a disposal freeze has been issued.
2. Withhold from destruction any records within the scope of the records disposal freeze.
3. Retain the records identified in the disposal freeze for the duration of the 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 organisation; they will not be accepted for transfer to the NT Archives Service. Organisations 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.

Agencies should be mindful that current records disposal schedules should not be applied to records created prior to 1 July 1978 in accordance with [Archives Management Standard – Disposal of Pre-1978 Records](#).

## Impact

The costs relating to the management and storage of an agency's temporary records covered by a records disposal freeze is the responsibility of the public sector organisation.

## Further Information

For further information please refer to:

[Records Disposal Freeze Policy for NT Public Sector Organisations](#)

[Records Disposal Freeze Implementation Advice for NT Public Sector Organisations](#)

[National Archives of Australia website](#) ([www.naa.gov.au](http://www.naa.gov.au))

## Enquiries

NT Records Service  
Department of Corporate and Information Services  
GPO Box 2391  
Darwin NT 0801

Email: [ntg.recordspolicy@nt.gov.au](mailto:ntg.recordspolicy@nt.gov.au)  
Telephone: (08)8924 3847  
Facsimile: (08)8924 3880

NT Records Service website  
[http://www.nt.gov.au/dcis/info\\_tech/records\\_policy\\_standards/index.shtml](http://www.nt.gov.au/dcis/info_tech/records_policy_standards/index.shtml)

[signed]

Phyllis Williams

Director  
NT Archives Service

11 March 2016

[signed]

Doug Cooke

Senior Director  
ICT Policy and Governance (NT Records  
Service)

11 March 2016

## Schedule A: Categories of records subject to the records disposal freeze

The following categories of records have been identified by the NT Archives Service and NT Records Service as those most likely to contain relevant records subject to this disposal freeze:

**1. Personnel and other records of all former APS, Defence Force, Commonwealth or Approved Authority staff who were born in or after 1895, and who were 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 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 relating to all former APS, Defence Force, Commonwealth or Approved Authority staff who were born in or after 1895 and who were in such employment at any time between 1 January 1960 and 31 December 1999 including information on:**

- 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 B). 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.

## SCHEDULE B: 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.

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.

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