Records Advice

No 59

Records Disposal Freeze – Superannuation Records 2010-2015. Post Cornwell Superannuation Case Litigation - Processing of Additional Claims

This Records Advice provides the background to the Records Disposal Freeze on selected personnel and other records that may be needed in processing claims concerning eligibility to join a Commonwealth superannuation scheme. The purpose of this document is to inform agencies that a Records Disposal Freeze has been initiated to protect those records that may be required in processing these claims.

The Commonwealth Disposal Freeze

On 16 December 2010 pursuant to section 24(2)(b) of the *Archives Act 1983,* the National Archives of Australia imposed a general disposal freeze on selected Commonwealth personnel and other records that may be needed in processing claims concerning eligibility to join a Commonwealth superannuation scheme. That disposal freeze has been extended to 31 December 2015. A reciprocal arrangement established by the Territory Records Office for equivalent records in the custody of the ACT Government has now been extended to the same date.

Background

Although individuals who were employed by the Commonwealth in a temporary (now non-ongoing) or exempt capacity (for industrial staff) by certain Commonwealth authorities which were 'Approved Authorities' for *Superannuation Act* purposes 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 because negligent advice about eligibility to join a scheme was given to one of these employees'. The Commonwealth and ACT Government are now responding to a large number of additional claims.

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

The decision to extend the disposal freeze was made at the request of the Commonwealth Department of Finance and Administration, the National Archives of Australia and the Legal and Insurance Policy Branch of the ACT Department of Treasury.

Duration of disposal freeze

The disposal freeze on selected personnel and other records that may be needed in processing claims concerning eligibility to join a Commonwealth superannuation scheme will be applicable consistent with the National Archives of Australia Disposal Freeze: Post Cornwell Superannuation Case Litigation – Processing of Additional Claims. The interim duration was in force from 1 November 2006 until 31 December 2008 and again extended from 1 January 2009 to 31 December 2010. The National Archives of Australia has now requested that this Disposal Freeze be extended again from 1 January 2011 until 31 December 2015. This Records Advice has been issued by the Director of Territory Records to this effect and extended to refer to legacy and current relevant ACT Government records.

Agencies affected

The disposal freeze applies to records in the custody of agencies as defined in section 7 of the *Territory Records Act 2002*.

Categories of records subject to the records disposal freeze

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

1. Personnel and other records of all former and current APS, Defence Force, Commonwealth or ACT Government staff who were:
   a) born in or after 1892; and
   b) who were in such employment at any time between 1 November 1942 and 31 December 1999;

where those records relate to service history; terms, conditions and benefits of employment; supervisory responsibilities; salary history; or superannuation (including scheme information, applications, contribution history and eligibility for superannuation). This category now applies to permanent or ongoing as well as temporary/exempt or non-ongoing employees.

The relevant records of these employees may have been kept together with other documents and transferred between agencies if the person was promoted or transferred. Potential claimants could have worked in any area of the Commonwealth or ACT Government at any time over the last 50 or more years.

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

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

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

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

   c) born in or after 1892; and

   d) employed at any time between 1 November 1942 and 31 December 1999.

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

3. All agency records of requests by staff about their superannuation status or requests to join a scheme. 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 agencies relevant to:

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

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

5. In relation to former agencies which were reconstituted (eg sold, corporatised, privatised), any records of the sale that relate to indemnities or transfer of liabilities.

6. Records in the above categories held by the ACT Government and created prior to 1988, for example: where ACT Public Service employees were formerly APS employees.

7. Records created after 1988 by any ACT Government agency relating to requests by staff about their superannuation status, requests to join a scheme or policies applying within that agency to superannuation entitlements.

8. Records still held by the Commonwealth that relate to ACTPS employees who were formerly APS employees are covered by this disposal freeze.

Records affected

In broad terms, categories of records affected by the disposal freeze cover the personal history and superannuation contribution records of current and former

- Australian Public Service and Defence Force staff;
- Commonwealth staff; and
- ACT Government staff

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

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

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.

Website information

For further information as this Records Disposal Freeze applies to the records of the ACT Government contact the Territory Records Office.

For further information as the Records Disposal Freeze applies to the records of the Commonwealth:
http://www.naa.gov.au/Images/Notice%20of%20superannuation%20disposal%20freeze%20-signed%2016%20December%202010_tcm2-33429.pdf