

## Records Disposal Freeze – Superannuation Records. 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 relevant to claims about eligibility to join superannuation schemes, following what is known as the Cornwell case. The purpose of this document is to inform agencies that a Records Disposal Freeze continues to be in place to protect those records that may be required in processing post-Cornwell claims.

### The Commonwealth Disposal Freeze

Pursuant to section 24(2)(b) of the *Archives Act 1983* (Cth), the National Archives of Australia has imposed a disposal freeze on selected Commonwealth personnel and other records that may be needed in processing claims concerning eligibility to join a Commonwealth superannuation scheme. The Commonwealth disposal freeze has been extended until 31 December 2030. A reciprocal arrangement was established by the Territory Records Office for equivalent records in the custody of the ACT Government. There is currently no expiry date applied to the Territory Records Office freeze, which is documented in [NI2016-378](#). While it is currently anticipated that the freeze will no longer be required after 2030, it is important to note that the freeze remains in force until NI2016-378 is revoked by the Director of Territory Records.

### Background

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. However, there was provision under the relevant legislation for those people 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 Governments have subsequently responded 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 and the Territory in defending or processing those claims.**

### 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 initial freeze was in force from 1 November 2006 until 31 December 2008. This period was subsequently extended to 31 December 2010 and then again to 31 December 2015. In 2015 the National Archives, in consultation with the Department of Finance, again extended the freeze until 31 December 2030. This Records Advice

has been issued by the Director of Territory Records to clarify that the freeze will remain in place in the ACT to 31 December 2030 in line with the National Archives' earlier decision.

### Agencies affected

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

### 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.

A discussion of the details of the types of documents subject to the freeze can be found in the National Archives' [Disposal Freeze Notice](#), and in the Territory Records Office's [NI2016-378 Territory Records \(Records Disposal Schedule - Protection of Records Relevant to Cornwell-type Superannuation Claims\) Approval 2016 \(No 1\)](#)

### Impact on ACT Government records

In practice, this freeze requires that personnel files and other records that relate to individuals' superannuation decisions and entitlements should not be destroyed for ACT public servants who previously worked for the Commonwealth government between 1960 and 1999.

While the freeze relates to records of public servants born after 1 January 1895, in practice, only staff with dates for birth between 1945 and 1984 are likely to be affected.



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