

National Archives reference: 2007/1061

Ms Barbara Flett  
Department of Human Services  
barbara.flett@humanservices.gov.au

Dear Ms Flett

At our meeting on 26 February 2007, you asked us about the treatment of the records accumulated in the proposed Access Card registration processes in relation to their status under the *Archives Act 1983*.

Based on our discussion with you:

We expect that all of the records accumulated or created by the registration authority will be Commonwealth records and will therefore fall under the provisions of the Act, as well as of the other administrative law provisions of the Commonwealth, except as may be varied by the enabling legislation.

It is possible for the enabling legislation to make specific provision for the control and ultimate disposal of the classes of documents discussed above without conflict with the Archives Act, as s.24.2(a) provides that Commonwealth records may be disposed of as required by law.

Examples of specific legislation requiring disposal of records are few – the Telecommunications (Interception and Access) Act 1979 (s.14) is one such example. Some legislation implicitly prevents the disposal of records by requiring them to be kept accessible to the public (eg. the Register of Australian Shipping).

In general, we believe that it would be preferable to use the usual administrative arrangements under the Archives Act to deal with records disposal matters relating to the Access Card function. The Archives normally authorizes the disposal of Commonwealth records accumulated by Commonwealth agencies through a joint appraisal process in which the agency's ongoing business needs are considered, as well as the longer-term whole-of-Commonwealth interests and risks, community interests and future research needs. We believe this process can adequately address the issues you raised.

From our experience, it is likely that applying the same administrative process to all classes of identification documents will be administratively simpler and be less costly.

The records that the registration authority would create itself would be Commonwealth records and would in due course need to be dealt with under the disposal provisions of s.24.2(b) of the Archives Act. The Archives would expect to collaborate with the registration authority in the usual way to arrive at a disposal authority under s.24.2(b) of the Act that prescribed the periods for which various classes of those records would be retained or be otherwise disposed of.

If the registration authority decided to retain copies of any documents within its records, then disposal arrangements could be made to cover those materials through the appraisal process. Such a decision would, however, be likely to impact on the manner in which the authority maintained the records and on the controls they were obliged to have in place to manage access to them under the Information Privacy Principles of the Privacy Act. If the appraisal process resulted in records coming to the Archives, there are provisions under s.33 of the Archives Act that would enable such privacy issues to be taken into account appropriately before any such materials were made available to the general public under the access provisions of the Act.

I trust that this advice is consistent with your notes of our discussion. If you have any other issues relating to this matter on which you require further advice or clarification, please do not hesitate to contact Margaret Chalker, A/g Assistant Director General, Government Information Management Branch on 6212 3681

James Barr  
Deputy Director General  
National Archives of Australia