

IP Australia  
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**NATIONAL ARCHIVES OF AUSTRALIA - SUBMISSION**  
**IP Australia – Regulation Changes Proposed to Implement Trans-Tasman Initiatives: Consultation Paper**

**Introduction**

The National Archives of Australia (the Archives) is pleased to provide the following submission to IP Australia in response to the *Regulation Changes Proposed to Implement Trans-Tasman Initiatives: Consultation Paper*.

The Archives makes this submission to ensure that its important, independent role in regard to overseeing Commonwealth recordkeeping, identifying the Commonwealth's archival resources and preserving and making those archival resources publicly available is:

- taken into account by IP Australia; and
- not affected inadvertently by the Trans-Tasman initiatives.

The Trans-Tasman Initiatives will implement a single patent application and examination process for Australia and New Zealand. This raises issues in respect to retention of the records.

The consultation paper indicates that:

- a bilateral agreement is being developed between the Australian and New Zealand governments to support the implementation of the single patent application and examination processes; and
- the NZ online system for applications for patents will become the system used for 'single applications', though the detail of this system and associated process is not clear.

Any bilateral agreement will need to clarify each party's responsibilities around the retention and management of records created as a result of the Trans-Tasman Patent arrangements to ensure that Australia's valuable records are preserved and that practices do not inadvertently result in the destruction or disposal of records outside of the relevant legislative framework.

**The Role of the Archives**

The objects of the Archives Act include:

- preserving and making publicly available the archival resources of the Commonwealth;
- overseeing Commonwealth record-keeping, by determining standards and providing advice to Commonwealth institutions; and
- imposing record-keeping obligations in respect of Commonwealth records.

The functions of the Archives include:

- ensuring conservation and preservation of the existing and future archival resources of the Commonwealth;
- identifying the archival resources of the Commonwealth;
- promotion, by providing advice and other assistance to Commonwealth institutions, the creation, keeping and management of current Commonwealth records in an efficient and economical manner and in a manner that will facilitate their use as part of the archival resources of the Commonwealth;
- encouraging and fostering the preservation of all other archival resources relating to Australia;
- encouraging, facilitating, publicising and sponsoring the use of archival material;
- making Commonwealth records available for public access; and
- developing and fostering the coordination of activities relating to the preservation and use of the archival resources of the Commonwealth and other archival resources relating to Australia.

In most cases, records created or received by Commonwealth institutions are the property of the Commonwealth or of the Commonwealth institution. The *Archives Act 1983* (Cth) ('the Archives Act'), applies to Commonwealth records. A Commonwealth record is defined in the Archives Act as:

- *a record that is the property of the Commonwealth or of a Commonwealth institution; or*
- *a record that is to be deemed to be a Commonwealth record by virtue of a regulation under subsection (6) or by virtue of section 22;*

*but does not include a record that is exempt material or is a register or guide maintained in accordance with Part VIII.*

A record is defined as:

*A document, or an object, in any form (including any electronic form) that is, or has been, kept by reason of:*

- *any information or matter that it contains or that can be obtained from it; or*
- *its connection with any event, person, circumstance or thing.*

A document is defined in the *Acts Interpretation Act 1901* (Cth) as

*any record of information, and includes:*

*(a) anything on which there is writing; and*

*(b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and*

*(c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and*

*(d) a map, plan, drawing or photograph.*

Keeping, destroying or transferring records to the Archives or out of Australian Government custody or ownership is regulated by Section 24 of the Archives Act. Section 24 indicates the ways in which agencies may keep, destroy or transfer records, which include:

- Destruction of records with the permission of the Archives contained in:
  - general records authorities issued by the Archives; and / or
  - records authorities issued by the Archives which relate to agency-specific business.

Records authorities enable agency staff to work out how long records need to be retained and when a record will be due for destruction or transfer to the Archives. Agency-specific records authorities cover the records created in the course of an agency's core business. General records authorities set out the requirements for keeping, destroying or transferring records of business common to many agencies.

- Normal administrative practice (NAP). NAP allows agencies to:
  - destroy certain types of records in the normal course of business;
  - manage the volumes of records they create and use every day in an efficient and accountable way

Records can be routinely destroyed using a NAP if they do not provide evidence of agency business and do not form part of its corporate records. Agencies do not need to contact the Archives for permission to dispose of records that fit within the scope of NAP.

- Specific legislation which requires the destruction of particular records.
- For the purpose of placing Commonwealth records that are not in the custody of the Commonwealth or of a Commonwealth institution in the custody of the Commonwealth or of a Commonwealth institution that is entitled to custody of the records.

### **Patent applications and the Archives Act**

Patent applications and decisions are considered to be Commonwealth records and subject to the Archives Act.

In February 2014 the National Archives approved a records disposal authority for IP Australia that covers patent applications (2004/00068493 – see Attachment). In addition, to ensuring that any bilateral agreement clarifies each party's responsibilities around the retention and management of records IP Australia should also consider the implications of the proposed initiatives on this disposal authority and engage with the Archives at an early stage regarding any necessary amendments.



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### **Attachments**

1. Records Disposal Authority for IP Australia – 2004/00068493