

Public Records



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1984, No. 7

An Act to provide for the better Preservation of the Public Records of the Cook Islands

(13 September 1984)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

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PART I

PRELIMINARY

1. Short title - This Act may be cited as the Public Records Act 1984.

2. Interpretation - In this Act, unless the context otherwise requires -

"Archives office" means the National Archives of the Cook Islands established under this Act;

"Archivist" means the Archivist appointed under this Act;

"Government office" means any ministry, department, office, agency or instrument of any kind of the legislative or executive or judicial government of the Cook Islands; and includes any office or corporation or other body declared by the Minister to be a Government office for the purposes of this Act;

"public records" means all such documentary materials of any kind, nature or description which have been drawn up, made, received, acquired or used in the course of legislative, administrative or executive transactions or in proceedings in any court, together with all exhibits and other material evidences which form part of or are annexed to or are otherwise related to specific documents, which are or are required to be in the custody of any officer or Government office or which may at the commencement of this Ordinance or thereafter be transferred to or acquired by the Archives office;

"Minister" means the Minister for Arts and Culture;

3. Application - Nothing in this Act or in any regulations made under it shall apply with respect to any public record which has been drawn up, received acquired or used by any Government office if such record discloses any information which is required to be kept secret pursuant to the provisions of any Act.

PART II

ADMINISTRATION

4. Archives Office - (1) There shall continue to be established an Archives office to be known as "the National Archives of the Cook Islands" wherein shall be stored for better preservation such of the public records of the Cook Islands as are transferred or acquired by the Archivist under the provisions of this Act.

(2) Subject to any general or special directions which may be given to him by the Minister, the Archivist may by contract or bequest or in any like manner acquire for the Archives office all such original records, manuscripts and other documentary materials, or copies, or replicas thereof, other than public records, as he may deem necessary or desirable to secure, and all such materials shall be deemed to be public records of the Cook Islands for the purposes of this Act.

5. Archivist - There shall be appointed pursuant to the Public Service Act 1975 an Archivist who shall, subject to any directions given to him by the Minister, be charged with the care, custody, control and administration of the public records in the Archives office and the public access thereto and with the performance of any other duties prescribed by this Act.

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6. Delegation of the Archivist's powers - (1) The Archivist may from time to time delegate in writing any of his powers under this Act, except the power of authorising the destruction or disposal of public records, to any person or class of persons.

(2) Subject to any general or special directions given or conditions attached by the Archivist, the person to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation: Provided that no such delegation shall prevent the exercise of any power by the Archivist.

(3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Archivist by whom it was made may have ceased to hold office and shall continue to have effect as if made by his successor in office.

PART III

CUSTODY AND PRESERVATION OF ARCHIVES

7. Deposit of public records in the Archives office - (1) All public records of the age of fifteen years or over (other than those which under any Act are required to be held in the custody of a specified person or Government office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as-

- (a) evidence of the organisation, functions and transactions of the Government office in which they were originally made or received; or
- (b) evidence of public or private personal or property rights or civic rights; or
- (c) containing historical or general information,

shall be transferred to the custody of the Archivist and be deposited in the Archives office.

(2) Notwithstanding anything contained in subsection(1)-

- (a) where the Archivist is satisfied that the deposit in the Archives office of any particular public record of the age of fifteen years or over would unduly prejudice the effective administration of any Government office, he shall defer the deposit of that public record for such period as may be agreed upon between the Archivist and the administrative head of the Government office affected;
- (b) where the administrative head of the Government office, having the possession or control of any public record satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that record in the Archives office, the Archivist shall from time to time defer the deposit of that public record for such period as may be agreed upon between that administrative head and the Archivist;
- (c) where the Minister in charge of any Government office certifies that in his opinion any specified public record or specified class of public records in the custody or control of the Government office contains information the release of which may adversely affect the security of the Cook Islands or relations between the Government of the Cook Islands and the

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government of any other country, the deposit in the Archives office of that public record or of public records of that class shall be deferred for such period or shall be made subject to such conditions as to access or otherwise as that Minister from time to time directs.

(d) where the deposit of any public record in the Archives office is deferred as aforesaid, the Archivist may prescribe any conditions he thinks fit to ensure the safe preservation of any such record during the time they are kept in a Government office.

(3) Any public records deposited under the provisions of subsection (2) may be deposited unconditionally or, if the administrative head of the Government office making the deposit so requires shall be deposited subject to such conditions as to access and otherwise as may be agreed upon from time to time by the Archivist and the administrative head of that office.

(4) Where the administrative head of any Government office and the Archivist are unable to agree as to whether or not the deposit of any public records in the Archives office should be deferred or as to the period for which that deposit should be deferred or as to the conditions as to access and otherwise on which any public records should be deposited, that question shall be determined by the joint decision of the Minister and the Minister in Charge of that Government office, and their decision shall be final.

8. Deposit of public records of less than fifteen years of age -
(1) The Archivist may allow the deposit in the Archives office of public records of less than fifteen years of age if he considers that they are of sufficient value for deposit.

(2) Any deposit of public records under the provisions of subsection (1) may be subject to any special conditions imposed by the administrative head of the Government office making the deposit.

9. Public records not in the Archives office - (1) The Archivist shall be entitled from time to time to inspect any public records that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary.

(2) Nothing in this section shall be deemed to authorise the Archivist to inspect the contents of any public records -

(a) which by law are forbidden to be communicated to him; or

(b) which are secret or confidential, except with the consent of the administrative head of the Government office having the custody thereof.

10. Return of public records to Government office - Where the administrative head of the Government office by which any public record was deposited in the Archives, or the administrative head of the successor of that Government office, satisfies the Archivist that the public record is required for use in that Government office, the Archivist shall return such public record to the custody of that Government office for such period as may be agreed upon between the Archivist and the administrative head, and subject to such conditions as the Archivist may prescribe to ensure the safe custody and preservation of that public record during the time it is kept in that Government office.

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11. Public records to be surrendered on demand - Where any public record is in the custody or possession of any person other than a public officer or other person authorised to have such custody or possession in his official capacity, that person shall, on demand in writing by the Archivist, deposit that public record in the Archives office or such other Government office as the Archivist may direct.

12. Public records not to be destroyed or disposed of without the authority of the Archivist - (1) No person shall destroy or otherwise dispose of, or authorise the destruction or other disposal of, any public record of any kind whatsoever that is in his possession or under his control, except with the consent of the Archivist given in accordance with the provisions of this Act.

(2) Before authorising the destruction of any public record or any class thereof, the Archivist may, if he thinks fit, consult with any person whom the Archivist considers qualified to advise him as to the value of permanent preservation.

13. Routine destruction of public records - The Archivist may authorise the immediate destruction, or the destruction after the expiration of such specified time as may be agreed upon between the Archivist and the administrative head of the Government office concerned, of any specified public records or class of public records that-

- (a) by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation in the Archives office; and
- (b) are not required for reference purposes in any Government office after action on them is completed, or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Archivist and the administrative head of the Government office concerned.

14. Access to public records in the Archives office - (1) Except as may be otherwise provided by statute, and subject to the conditions under which any records are deposited, all records deposited in the Archives office shall be available for public reference subject to the provisions of any regulations made under this Act:

Provided that-

- (a) the Archivist may, for any good cause, withhold access to any specified public record or any specified class of public records in his custody subject to the right of the person so denied access to appeal to the Minister, whose decision thereon shall be final;
 - (b) any public record deposited in the Archives office by any court and containing any information relating to the trial or punishment of any particular person may be inspected only by a person authorised in writing by the Chief Justice or by any other person authorised by the Chief Justice in that behalf.
- (2) Nothing in this section contained shall limit the powers of any competent court to order the production of any public record of the Cook Islands.

(3) Notwithstanding the other provisions of this section and subject to the provisions of paragraph (b) of subsection (1), the Minister may at any time, by order in writing addressed to the Archivist withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records in the custody of the Archivist.

(4) Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extras from any public archives which are available for public reference under this section.

15. Publication of public records - On the recommendation of the Archivist, the Minister may authorise the publication of any public records deposited in the Archives office and available for public reference which he considers to be of sufficient interest to warrant their publication.

16. Copyright - (1) Nothing in this Act shall derogate from any provision of the law relating to copyright in relation to anything contained in any public records deposited in the Archives office under the provisions of this Act.

(2) Where any person publishes any work containing any passage from any public record deposited in the Archives office, he shall in that publication acknowledge the source from which that passage is taken.

PART IV

MISCELLANEOUS PROVISIONS

17. Archives office seal - The Archivist shall cause to be made a seal for the Archives office with which all certified copies issuing out of the office shall be sealed.

18. Certified copies - Any copy of any public record of the Cook Islands in the custody of the Archivist which is certified by the Archivist to be a true copy of such public record shall be received as evidence of the contents of such record in all courts of law within the Cook Islands.

19. Regulations - (1) Subject to the provisions of subsection (2), the Minister may, from time to time, make regulations for any purpose for which regulations are contemplated by this Act and all such other regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof and without limiting the generality of the foregoing, may make regulations-

- (a) regulating the transfer of public records from any Government office to the Archives office or any record centre or other repository which may be established for the purposes of this Act;
- (b) regulating the manner of destruction or other disposal of valueless public records;
- (c) regulating the admission of the public to the Archives office and the use by the public of public records of the Cook Islands deposited in the Archives office;

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- (d) providing for the custody and preservation of records deposited in the Archives office under the provisions of subsection (2) of section 4 and prescribing the fees (if any) to be charged for that custody and preservation.

(2) The Chief Justice may make rules of court with regard to matters referred to in paragraph (a), (b) or (c) of subsection (1) in cases where the public documents concerned relate to proceedings in any court.

20. Offences and penalties - (1) Every person shall commit an offence against this Act who-

- (a) wilfully or negligently damages any public records; or
- (b) wilfully or negligently disposes of or destroys any public records otherwise than in accordance with the provisions of this Act; or
- (c) does any act in contravention of or fails to comply with any provision of this Act.

(2) Every person who commits an offence against this Act shall be liable on conviction to a fine not exceeding two hundred dollars.

(3) The court by which any person is convicted of an offence against paragraph (b) of subsection (1) may, in addition to any penalty imposed for the offence, direct that that person shall not be entitled to have access to the Archives office for such period as the court thinks fit.
