

**NATIONAL ARCHIVES AND RECORDS SERVICE OF SOUTH AFRICA ACT (ACT
NO. 43 OF 1996)**

as amended by

Cultural Laws Amendment Act 36 of 2001

ACT

To provide for a National Archives and Record Service; the proper management and care of the records of governmental bodies; and the preservation and use of a national archival heritage; and to provide for matters connected therewith.

[Long title substituted by s. 20 of Act 36 of 2001.]

[ASSENTED TO 27 SEPTEMBER 1996]
[DATE OF COMMENCEMENT: 1 JANUARY 1997]
(Afrikaans text signed by the President)

1. Definitions

In this Act, unless the context otherwise indicates-

'appraisal' means the archival function of determining the eventual disposal of records;

'archives' means records in the custody of an archives repository;

'archives repository' means any archives repository contemplated in section 11;

'Council' means the National Archives Advisory Council contemplated in section 6;

[Definition of 'Council', previously definition of 'Commission', substituted by s. 7 (a) of Act 36 of 2001.]

'custody' means the control of records based upon their physical possession;

'disposal authority' means a written authority issued in terms of section 13 (2) (a) specifying records to be transferred into the custody of the National Archives or specifying records to be otherwise disposed of;

'electronic records system' means any records system in which information is generated electronically and stored by means of computer technology;

'governmental body' means any legislative, executive, judicial or administrative organ of state (including a statutory body) at the national level of government;

'head of a governmental body' means the chief executive officer of a governmental body or the person who is acting as such;

'Minister' means the Minister responsible for the administration of this Act;

'National Archives' means the National Archives and Records Service of South Africa established by section 2;

[Definition of 'National Archives' substituted by s. 7 (b) of Act 36 of 2001.]

'non-public record' means a record created or received by a private individual or a body other than one defined as a governmental body in terms of this Act or a provincial law pertaining to records or archives;

'prescribe' means prescribe by regulation;

'public record' means a record created or received by a governmental body in pursuance of its activities;

'record' means recorded information regardless of form or medium;

'recording' means anything on which sounds or images or both are fixed or from which sounds or images or both are capable of being reproduced, regardless of form;

'records classification system' means a classification plan for the identification, arrangement, storage and retrieval of records;

'regulation' means any regulation made under this Act;

'this Act' includes the regulations.

2 Establishment of National Archives of South Africa

There is hereby established a branch of the public service of the Republic to be known as the National Archives and Records Service of South Africa.

[S. 2 substituted by s. 8 of Act 36 of 2001.]

3 Objects and functions of National Archives

The objects and functions of the National Archives shall be to-

- (a) preserve public and non-public records with enduring value for use by the public and the State;
- (b) make such records accessible and promote their use by the public;
- (c) ensure the proper management and care of all public records;
- (d) collect non-public records with enduring value of national significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the nation's experience neglected by archives repositories in the past;

- (e) maintain a national automated archival information retrieval system, in which all provincial archives services shall participate;
- (f) maintain national registers of non-public records with enduring value, and promote co-operation and co-ordination between institutions having custody of such records;
- (g) assist, support, set standards for and provide professional guidelines to provincial archives services;
- (h) promote an awareness of archives and records management, and encourage archival and records management activities;
- (i) generally promote the preservation and use of a national archival heritage.

4 National Archivist and staff

- (1) (a) The Minister shall, after consultation with the Public Service Commission contemplated in section 196 of the Constitution, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), on such grade as the Minister may determine.
- (b) The National Archivist shall manage the National Archives under the direction of the Director-General: Arts, Culture, Science and Technology.

[Sub-s. (1) substituted by s. 9 of Act 36 of 2001.]

- (2) The National Archivist shall in the performance of his or her functions be assisted by officers and employees appointed in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).
- (3) (a) The National Archivist may, subject to any conditions, delegate a power or assign a duty to a member of the staff and may at any time cancel such delegation or assignment.
- (b) A delegation or assignment shall not divest the National Archivist of the power delegated or duty assigned and he or she may at any time amend or set aside any decision made thereunder, or exercise the power or perform the duty concerned.

5 Powers and duties of National Archivist

- (1) The National Archivist shall-
 - (a) take such measures as are necessary to arrange, describe and retrieve records;
 - (b) provide information, consultation, research and other services related to records;
 - (c) with special emphasis on activities designed to reach out to less privileged sectors of society, make known information concerning

records by means such as publications, exhibitions and the lending of records;

- (d) require of a person who has made use of records in the custody of the National Archives while researching a publication or dissertation to furnish a copy of the publication or dissertation to the National Archives;
- (e) generally, take such other steps and perform such other acts as may be necessary for or conducive to the achievement of the objects of the National Archives.

(2) The National Archivist may-

- (a) provide training in archival techniques and the management of records;
- (b) co-operate with organisations interested in archival matters or the management of records;
- (c) provide professional and technical support in aid of archival activities and the archival community;
- (d) on the advice of the Council and with the concurrence of the Minister exempt a governmental body from any provision of this Act.

[Para. (d) substituted by s. 10 (a) of Act 36 of 2001.]

- (e) publish the appraisal policy and lists of records that may be destroyed.

[Para. (e) added by s. 10 (b) of Act 36 of 2001.]

6 Establishment, constitution and functions of National Archives Advisory Council

(1) The Minister shall by notice in the Gazette establish a council to be known as the National Archives Advisory Council.

(2) The Council shall consist of-

- (a) not more than six members appointed by the Minister from among persons who are knowledgeable of or have an interest in archival matters; and
- (b) every chairperson of the various provincial councils advising on archives or, in the absence of such a provincial council, a representative for the province in question elected through a public and transparent process which shall be determined and overseen by the responsible member of the Executive Council of that province.

(3) The procedures and other conditions for appointment as a member of the Council shall be as prescribed.

(3A) The Minister may dissolve the Council on any reasonable grounds.

(4) The functions of the Council shall be to-

- (a) advise the Minister and the Director-General: Arts, Culture, Science and Technology on any matter related to the operation of this Act;
- (b) advise the National Archivist on furthering the objects and functions of the National Archives;
- (c) advise and consult with the South African Heritage Resources Agency on the protection of records forming part of the National Estate;
- (d)
- (e) consult with the Public Protector on investigations into the unauthorised destruction of records otherwise protected under this Act; and
- (f) annually submit a business plan to the Minister for approval.

(5) The Council may appoint committees from amongst its members and may assign to any committee so appointed such of its functions as it may deem fit: Provided that the Council shall not be divested of any function which it has so assigned and may amend or revoke a decision of such a committee.

(6) The procedure at meetings of the Council and of a committee shall be as prescribed.

(7) The Council or any committee may, subject to the approval of the Minister, co-opt any person to serve on the Council or on a committee, as the case may be, in an advisory capacity, but such a co-opted member shall not have any voting rights.

(8) (a) Subject to paragraph (b), a member of the Council who is not in the full-time service of the State, may receive in respect of his or her functions as a member of the Council such allowances as the Minister may determine with the concurrence of the Minister of Finance.

(b) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of allowances contemplated in paragraph (a).

[S. 6 substituted by s. 11 of Act 36 of 2001.]

7 Secretary and staff of Council

The administrative and secretarial functions of the Council must be performed by a section established by the Director-General in terms of the Public Service Act, 1994 (Proclamation 103 of 1994).

[S. 7 substituted by s. 12 of Act 36 of 2001.]

8 and 9

[Ss. 8 and 9 repealed by s. 13 of Act 36 of 2001.]

10 Annual reports

- (1) As soon as practicable after the end of each financial year the National Archivist shall compile a report on all the activities of the National Archives during that financial year, and the Council shall compile a report on all the activities of the Council during that financial year.
- (2) The report of the National Archivist shall include-
 - (a) details of income and expenditure;
 - (b) a complete list of disposal authorities issued;
 - (c) an account of all cases of unauthorised disposal of public records investigated by the National Archives; and
 - (d) an account of all governmental bodies which have failed to comply with this Act.
- (3) The report of the National Archivist and of the Council, together with the audited annual financial statements pertaining to the funds of the Council, shall be submitted to the Minister, and the Minister shall table them in Parliament within 14 days after receipt thereof if Parliament is then sitting, or if Parliament is not then sitting, within 14 days of the commencement of the next sitting of Parliament.
- (4) Within five months after the reports have been tabled, a delegation consisting of the National Archivist and at least two members of the Council must brief the Portfolio Committee on Arts, Culture, Science and Technology on the reports.

[S. 10 amended by s. 14 of Act 36 of 2001.]

11 Custody and preservation of records

- (1) The Minister may from time to time establish archives repositories under the control of the National Archivist for the custody of records.
- (2) Public records identified in a disposal authority as having enduring value shall be transferred to an archives repository when they have been in existence for 20 years: Provided that-
 - (a) no other Act of Parliament requires such records to be kept in the custody of a particular governmental body or person;
 - (b) the National Archivist may, after consultation with the head of a governmental body, identify such records which-
 - (i) should remain in the custody of a governmental body; or
 - (ii) should be transferred to an archives repository before they have been in existence for 20 years;
 - (c) the National Archivist may defer the transfer of any public records; and
 - (d) the National Archivist may grant permission for any public records to to an archives repository before they have been in existence for 20 years.

- (3) The Minister may prescribe terms and conditions governing the transfer of records under subsection (2).
- (4) The National Archivist shall take such measures as are necessary to preserve and restore records.

12 Access and use

- (1) Subject to any other Act of Parliament which deals with access to public records-
 - (a) a public record in the custody of the National Archives shall be available for public access if a period of 20 years has elapsed since the end of the year in which the record came into existence;
 - (b) access to a public record in respect of which a period of less than 20 years has elapsed since the end of the year in which the record came into existence may be given by the National Archivist upon request.
- (2) A non-public record in the custody of the National Archives shall be available for public access subject to any conditions agreed upon at its acquisition in terms of section 14 (1) of this Act.
- (3) Notwithstanding subsections (1) and (2), the National Archivist may refuse access to a record on the grounds of its fragile condition, provided that there shall be a right of appeal to the Director-General against the refusal.

[Sub-s. (3) substituted by s. 15 of Act 36 of 2001.]

- (4) The Minister may make regulations as to the admission of the public to archives repositories, the making available of records for public access, and the use of equipment for the making of copies of or extracts from records in the custody of the National Archives.

13 Management of public records

- (1) Subject to the provisions of this Act, the National Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies.
- (2) Without limiting the generality of subsection (1)-
 - (a) no public record under the control of a governmental body shall be transferred to an archives repository, destroyed, erased or otherwise disposed of without the written authorisation of the National Archivist, issued subject to-
 - (i) section 6 (4) (e) of this Act; and
 - (ii) a final ruling by the Minister when unresolvable differences arise between the National Archivist and the Council;

[Sub-para. (ii) substituted by s. 16 of Act 36 of 2001.]

- (b) the National Archivist shall-

- (i) determine records classification systems to be applied by governmental bodies;
 - (ii) determine the conditions subject to which records may be microfilmed or electronically reproduced; and
 - (iii) determine the conditions subject to which electronic records systems should be managed;
 - (c) the National Archivist shall inspect public records in so far as such inspection may be necessary for the performance of his or her functions under this Act: Provided that the inspection of public records which contain information the disclosure of which is restricted by any other Act of Parliament shall be done only with the consent of the head of the governmental body concerned.
- (3) The Minister may make regulations as to the management and care of public records in the custody of governmental bodies.
- (4) The National Archivist may from time to time issue directives and instructions, which shall not be inconsistent with the regulations, as to the management and care of public records in the custody of governmental bodies.
- (5) (a) The head of a governmental body shall, subject to any law governing the employment of personnel of the governmental body concerned and such requirements as may be prescribed, designate an official of the body to be the records manager of the body.
- (b) The records manager shall be responsible to see to it that the governmental body complies with the requirements of this Act.
- (c) Additional powers and functions may be prescribed to a records manager.

14 Acquisition and management of non-public records

- (1) The National Archivist may on behalf of the State acquire by purchase or donation or on loan for a temporary period or in perpetuity, either unconditionally or subject to such conditions as may be agreed upon, non-public records which, in his or her opinion, have enduring value of national significance and which cannot be more appropriately preserved by another institution.
- (2) Subject to any conditions as may be applicable, non-public records acquired under subsection (1) shall be deposited in the archives repository determined by the National Archivist.
- (3) The producer or distributor of a recording which is a non-public record in terms of this Act shall, within six months after a request in writing is made by the National Archivist, provide the National Archivist with a copy of the recording in such form as may be specified in the request.
- (4) Subsection (3) shall not apply in respect of a recording that is required to be deposited in a legal deposit library, defined in section 1 of the Legal Deposit of Publications Act, 1982 (Act 17 of 1982), or that has not been broadcast or made public in South Africa.

(5) The National Archivist shall maintain national registers of non-public records in South Africa which, in his or her opinion, have enduring value, in consultation with the institutions having custody of such records.

(6)

[Sub-s. (6) deleted by s. 17 of Act 36 of 2001.]

15 Limitation of liability

No person, including the State, shall be liable in respect of anything done under this Act in good faith and without negligence.

16 Offences and penalties

(1) Any person who-

- (a) wilfully damages any public or non-public record in the control of a governmental body; or
- (b) otherwise than in accordance with this Act or any other law, removes, destroys or erases such record,

shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years or both such fine and imprisonment.

(2) Any person who fails to comply with-

- (a) a request mentioned in section 14 (3); or
- (b)

[Para. (b) deleted by s. 18 of Act 36 of 2001.]

shall be guilty of an offence and liable on conviction-

- (i) in the case of an offence contemplated in paragraph (a) of this subsection, to a fine not exceeding R5 000;
- (ii) in the case of an offence contemplated in paragraph (b) of this subsection, to a fine not exceeding R10 000.

(3) The National Archivist may refuse to allow any person convicted of an offence in terms of subsection (1) access to an archives repository for such period as he or she may deem fit, subject to an appeal to the Minister.

17 Transitional provisions

(1) The person who, immediately prior to the commencement of this Act, performed the functions of the director of archives under the Archives Act, 1962 (Act 6 of 1962), shall continue in office as the National Archivist.

(2) Every public servant who, immediately prior to the commencement of this Act, performed functions as a member of the staff of the said director, shall be deemed to be a member of staff of the National Archives.

- (3) Any records in the custody of the said director on the day immediately prior to the commencement of this Act are hereby transferred to the National Archivist subject to any terms and conditions that were applicable to such records on that day.
- (4) Until such time as a provincial legislator promulgates provincial legislation in terms of which a provincial archives service is established for that province, every provision of this Act shall apply in that province, and-
- (a) wherever the expression 'governmental body' occurs it shall mean a legislative, executive, judicial or administrative organ of state (including a statutory body) in such province at the national, provincial or local level of government; and
 - (b) wherever the expression 'public record' occurs it shall mean a record created or received by any institution contemplated in paragraph (a) in pursuance of its activities.

18 Regulations

The Minister may make regulations as to any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and, generally, with reference to any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act.

19 Repeal of laws

The following laws are hereby repealed:

- (a) The Archives Act, 1962 (Act 6 of 1962);
- (b) the Archives Amendment Act, 1964 (Act 12 of 1964);
- (c) the Archives Amendment Act, 1969 (Act 63 of 1969);
- (d) the Archives Amendment Act, 1977 (Act 54 of 1977); and
- (e) the Archives Amendment Act, 1979 (Act 32 of 1979).

20 Short title and commencement

This Act shall be called the National Archives and Record Service of South Africa Act, 1996, and shall come into operation on a date to be fixed by the President by proclamation in the Gazette.

[S. 20 substituted by s. 19 of Act 36 of 2001.]