



FREE STATE PROVINCE

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PROVINSIALE KOERANT

PROVINSIE VRYSTAAT

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OFFICE OF THE PREMIER

KANTOOR VAN DIE PREMIER

No. 4

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It is hereby notified that the Premier has assented to the following Act which is hereby published for general information:-

Hierby word bekend gemaak dat die Premier die onderstaande Wet bekragtig het, wat hierby ter algemene inligting gepubliseer word:-

No. 4 of 1999: Free State Provincial Archives Act, 1999

No. 4 van 1999: Wet op die Vrystaat Provinsiale Argief, 1999

ACT

To provide for a Provincial Archives; the proper management and care of the records of governmental bodies; and the preservation and use of a provincial archival heritage for all the people of the Province; and for matters connected therewith.

BE IT ENACTED by the Provincial Legislature of the Free State Province, as follows:-

*(English text signed by the Premier.)
(Assented to 14 April 1999)*

Definitions

1. In this Act, unless the context otherwise indicates -
- “**appraisal**” means the archival function of determining the eventual disposal of records; 10
- “**archives**” means records in the custody of an archives repository;
- “**archives repository**” means any archives repository contemplated in section 11 (1); 15
- “**Council**” means the Provincial Archives Council contemplated in section 6;
- “**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 Provincial Archives or specifying records to be otherwise disposed of; 20
- “**electronic records system**” means any records system in which information is generated electronically and stored by means of computer technology; 25
- “**governmental body**” means any legislative, executive, judicial or administrative organ of state (including a statutory body) at the provincial or local level of government in the Province; 30
- “**head of a governmental body**” means the chief executive officer of a governmental body or the person who is acting as such;
- “**Member for Finance**” means the Member of the Executive Council responsible for Finance; 35
- “**National Archives**” means the National Archives of South Africa established by section 2 of the National Archives of South Africa Act, 1996 (Act No 43 of 1996); 35

“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 the National Archives of South Africa Act, 1996 (Act No 43 of 1996) or this Act;

“prescribe” means prescribe by regulation;

“Province” means the Free State Province;

“Provincial Archives” means the Free State Provincial Archives established by this Act;

“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;

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

“regulation” means any regulation made under this Act;

“responsible Member” means the Member of the Executive Council responsible for the administration of this Act;

“this Act” includes the regulations.

Establishment of the Free State Provincial Archives

2. There is hereby established the Free State Provincial Archives as a branch of the Public Service.

Objects and functions of the Provincial Archives

3. (1) The objects and functions of the Provincial 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 provincial significance which cannot be more appropriately preserved by another institution, with due regard to the need to document aspects of the province's experience neglected by archives repositories in the past;

- (e) promote co-operation and co-ordination between institutions having custody of non-public records with enduring value;
- (f) promote an awareness of archives and records management, and encourage archival and records management activities.

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Provincial Archivist and staff

4. (1) The Provincial Archives shall be managed by a Provincial Archivist appointed by the responsible Member on the basis of relevant experience and an appropriate archival qualification.

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(2) The Provincial 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 No 103 of 1994).

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(3) (a) The Provincial 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.

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(b) A delegation or assignment shall not divest the Provincial 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.

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Powers and duties of Provincial Archivist

5. (1) The Provincial Archivist shall-

(a) take such measures as are necessary to arrange, describe and retrieve records;

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(b) provide information, consultation, research and other services related to records;

(c) require of a person who has made use of records in the custody of the Provincial Archives while researching a publication or dissertation to furnish a copy of the publication or dissertation to the Provincial Archives;

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(d) 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 Provincial Archives.

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- (2) The Provincial Archivist may -
- (a) provide training in archival techniques and the management of records; 5
 - (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; 10
 - (d) make known information concerning records by means such as publications, exhibitions and the lending of records, with special emphasis on activities designed to reach out to less privileged sectors of society.

Establishment, constitution and functions of Provincial Archives Council 15

6. (1) The responsible Member shall by notice in the Provincial Gazette establish a council to be known as the Provincial Archives Council.
- (2) The Council shall consist of the Provincial Archivist and not more than six other members appointed by the responsible Member from among persons who are knowledgeable of or have an interest in archival matters. 20
- (3) The procedures and other conditions for appointment as a member of the Council shall be as prescribed. 25
- (4) The functions of the Council shall be to -
- (a) advise the responsible Member on any matter related to the operation of this Act; 30
 - (b) advise and assist the Provincial Archivist in carrying out the objects and functions of the Provincial Archives;
 - (c) promote the co-ordination of archival policy formulation and planning at provincial level; 35
 - (d) exercise the powers contemplated in sections 12(3) of this Act;
 - (e) approve the appraisal policy of the Provincial Archives and monitor its implementation; 40
 - (f) maintain a provincial list of non-public records in the Province which, in the opinion of the Council, have enduring value.

- (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. 5
- (6) The procedure at meetings of the Council and of a committee shall be as prescribed. 5
- (7) The Council or a committee may 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. 10
- (8) An ordinary member, or a co-opted member referred to in subsection (7), who is not in the full-time service of the State shall be paid from the funds of the Council such travel and other expenses incurred by him or her in connection with the activities of the Council as the responsible Member may determine with the concurrence of the Member for Finance. 15

Secretary and Staff of Council

7. (1) The work incidental to the performance of the functions of the Council shall, subject to the directions of the Council, be performed by a secretary appointed by the Council on such conditions of service and at such remuneration and service benefits as the responsible Member, with the concurrence of the Member for Finance, may determine. 20
- (2) The Secretary may be assisted in the performance of his or her functions by persons appointed by the Council on such conditions of service and at such remuneration and subject to such service benefits as the Council may, with the approval of the responsible Member, granted with the concurrence of the Member for Finance, determine. 25 30

Funds of Council

8. (1) The funds of the Council shall consist of - 35
- (a) money appropriated by the Provincial Legislature;
- (b) money accruing to the Council from any other source. 40
- (2) The Secretary of the Council shall open an account in the name of the Council with an institution registered as a bank in terms of the Banks Act, 1990 (Act No 94 of 1990), and shall deposit in that account all money received in terms of this section.

- (3) The Council shall utilise its funds for the defrayment of expenses incurred in the performance of its functions under this Act.
- (4) The Council shall in each financial year, at a time determined by the responsible Member, submit a statement of the Council's estimated income and expenditure during the following financial year to the responsible Member for approval, granted with the concurrence of the Member for Finance. 5
- (5) The expenses of the Council in a given financial year shall not exceed the total amount approved under subsection (4). 10

Accountability

- 9. (1) The Secretary of the Council shall be the accounting officer of the Council and shall be charged with the accountability in respect of all money received and payments made by the Council. 15
- (2) The accounting officer shall -
 - (a) keep full and correct record of all money received or spent by the Council, and of the assets and liabilities of the Council; 20
 - (b) as soon as possible after the end of the financial year of the Council, draw up annual financial statements which shall, with appropriate details, show money received by the Council and expenditure incurred by the Council and its assets and liabilities at the end of the financial year concerned. 25
- (3) The financial year of the Council shall end on 31 March in each year.
- (4) The records and annual financial statements mentioned in subsection (2), shall be audited by the Auditor General. 30

Annual reports

- 10. (1) The Provincial Archivist shall as soon as practicable after the end of each financial year prepare and furnish to the responsible Member a report on the operations of the Provincial Archives during that financial year, including, without limiting the generality of the foregoing - 35
 - (a) details of income and expenditure; 40
 - (b) a complete list of disposal authorities issued;
 - (c) an account of all cases of unauthorised disposal of public records investigated by the Provincial Archives; and 45

- (d) an account of all governmental bodies which have failed to comply with provisions of this Act.
- (2) The Council shall as soon as practicable after the end of each financial year, prepare and furnish to the responsible Member a report on its proceedings and activities during that financial year. 5
- (3) The report of the Provincial Archivist and the report of the Council, together with the audited annual financial statements pertaining to the funds of the Council, shall be submitted to the responsible Member, and the responsible Member shall lay them upon the Table in the Provincial Legislature within 15 days after receipt thereof if the Provincial Legislature is then in session, or if the Provincial Legislature is not then in session, within 15 days of the commencement of the next session. 10

Custody and preservation of records 15

- 11. (1) The responsible Member may from time to time establish archives repositories under the control of the Provincial Archivist for the custody of records. 20
- (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 or the Provincial Legislature requires such records to be kept in the custody of a particular governmental body or person; 25
 - (b) the Provincial Archivist may, after consultation with the head of a governmental body, identify such records which - 30
 - (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; 35
 - (c) the Provincial Archivist may defer the transfer of any such records; and
 - (d) the Provincial Archivist may grant permission for any public records to be transferred to an archives repository before they have been in existence for 20 years. 40
- (3) The responsible Member may prescribe terms and conditions governing the transfer of records under subsection (2).

- (4) The Provincial Archivist shall take such measures as are necessary to preserve and restore records.

Access and use

12. (1) Subject to any other act of Parliament or the Provincial Legislature which deals with access to public records - 5
- (a) a public record in the custody of the Provincial 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; 10
- (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 Provincial Archivist upon request. 15
- (2) A non-public record in the custody of the Provincial 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. 20
- (3) Notwithstanding subsections (1) and (2), the Provincial 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 Council against the refusal. 25
- (4) The responsible Member 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 Provincial Archives. 30

Management of public records

13. (1) Subject to the provisions of this Act, the Provincial Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies. 35
- (2) Without limiting the generality of subsection (1) - 40
- (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 Provincial Archivist, issued subject to -

- (i) section 6(4)(e) of this Act; and
 - (ii) a final ruling by the responsible Member when unresolvable differences arise between the Provincial Archivist and the Council;
- (b) the Provincial Archivist shall - 5
- (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 10
 - (iii) determine the conditions subject to which electronic records systems should be managed; 15
- (c) the Provincial 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 or the Provincial Legislature shall be done only with the consent of the head of the governmental body concerned. 20
- (3) The responsible Member may make regulations as to the management and care of public records in the custody of governmental bodies. 25
- (4) The Provincial 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. 30
- (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. 35
- (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.

Acquisition and management of non-public records

14. (1) The Provincial 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 provincial significance and which are not more appropriately preserved by another institution. 5
- (2) Subject to any such conditions as may be applicable, non-public records acquired under subsection (1) shall be deposited in the archives repository determined by the Provincial Archivist. 10
- (3) No person or institution having non-public records in their custody which are recorded on the provincial list referred to in section 6(4)(f) shall destroy, export or otherwise dispose of such records without - 15
- (a) reporting to the Council their intention to so dispose of such records at least 90 days in advance of such action; and
- (b) securing the approval of the Council for such action. 20

Limitation of liability

15. No person, including the State, shall be liable in respect of anything done under this Act in good faith and without negligence. 25

Offences and penalties

16. (1) Any person who - 30
- (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, 35
- 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 section 14(3) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000. 40
- (3) The Provincial 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 responsible Member. 45

Regulations

17. The responsible Member 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. 5

Repeal of Laws

18. The following laws are hereby repealed: 10
- (1) (a) Archives Act, 1977 (Act No 11 of 1977) of the former Bophuthatswana;
 - (b) Qwaqwa Archives Act, 1986 (Act No 6 of 1986). 15
 - (2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1), and which may or shall be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act. 20

Short title and commencement

19. This Act shall be called the Free State Provincial Archives Act, 1999.