

Northern Cape, South Africa

Northern Cape Provincial Archives Act, 2013

Act 7 of 2013

Legislation as at 5 March 2014

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Northern Cape South Africa

Northern Cape Provincial Archives Act, 2013

Act 7 of 2013

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(English text signed by the Premier)

ACT

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

BE IT ENACTED by the Provincial Legislature of the Northern Cape Province as follows:—

Chapter I Interpretation

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 6(1);

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

"**Department**" means the Northern Cape Department responsible for cultural matters;

"**disposal authority**" means a written authority issued in terms of section 8(2)(a) specifying records to be transferred into the custody of the Provincial Archives or specifying records to be otherwise disposed off;

"**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 provincial or local level of government in the Province;

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

"**Head of Department**" means the Head of the Department responsible for cultural matters;

"**National Archives**" means the National Archives and Records Service of South Africa established by section 2 of the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);

"**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 the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996);

"**organ of state**" has the meaning set out in section 239 of the Constitution of the Republic of South Africa, 1996;

"**prescribe**" means prescribe by regulation;

"**Province**" means the Northern Cape Province referred to in section 103(l)(g) of the Constitution of the Republic of South Africa, 1996;

"**Provincial Archives**" means the Northern Cape Provincial Archives established by section 2;

"**Provincial Archivist**" means the Provincial Archivist appointed in terms of section 4(1);

"**Provincial Gazette**" means the *Provincial Gazette* of the Province;

"**Provincial Legislature**" means the Provincial Legislature of the Province referred to in section 104 of the Constitution of the Republic of South Africa, 1996;

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

"**Public Service Act**" means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"**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 of the Province responsible for the administration of this Act; and

"**this Act**" includes any regulation made under this Act.

Chapter II The Provincial Archives

2. Establishment of the Northern Cape Provincial Archives

There is hereby, within the Department, established the Northern Cape Provincial Archives.

3. Objects and functions of the Provincial Archives

The objects and functions of the Provincial Archives are 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; and
- (f) promote an awareness of archives and records management and encourage archival and record management activities.

4. Provincial Archivist and staff

- (1) The Provincial Archives must be managed by a Provincial Archivist appointed by the responsible Member on the basis of relevant experience and an appropriate archival qualification.
- (2) The Provincial Archivist manages the Provincial Archives under the direction of the Head of Department.
- (3) The Provincial Archivist must, in the performance of his or her functions, be assisted by officials appointed in terms of the Public Service Act.
- (4)
 - (a) The Provincial Archivist may, in writing and 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 does not divest the Provincial Archivist of the power delegated or duty assigned and he or she may at any time exercise the power or perform the duty concerned.

5. Powers and duties of Provincial Archivist

- (1) The Provincial Archivist must –
 - (a) take measures to arrange, describe and retrieve records;
 - (b) provide information, consultation, research and other services related to records;
 - (c) maintain a provincial list of non-public records in the Province, which, in the opinion of the Head of Department, have enduring value;
 - (d) draft an appraisal policy for the Provincial 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 Provincial Archives.
- (2) The Provincial 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) with the concurrence of the responsible Member, exempt a governmental body from any provision of this Act;
 - (e) 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;
 - (f) publish, in the *Provincial Gazette*, the appraisal policy and lists of records that may be destroyed;
 - (g) 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.

Chapter III Records

6. Custody and preservation of records

- (1) The responsible Member may from time to time establish archives repositories under the control of the Provincial Archivist for the custody of records.
- (2) Public records identified in a disposal authority as having enduring value must 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;
 - (b) the Provincial Archivist may, after consultation with the head of a governmental body, identify such records which —
 - (i) must remain in the custody of a governmental body; or
 - (ii) must be transferred to an archives repository before they have been in existence for 20 years;
 - (c) the Provincial Archivist may defer the transfer of any such records; and
 - (d) the Provincial Archivist may grant permission for any public record to be transferred to an archives repository before they have been in existence for 20 years.
- (3) The Provincial Archivist must take measures to preserve and restore records.

7. Access and use of records

- (1) Subject to any other Act of Parliament or the Provincial Legislature which deals with access to public records —
 - (a) a public record in the custody of the Provincial Archives is 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 Provincial Archivist upon request.
- (2) A non-public record in the custody of the Provincial Archives is available for public access subject to any conditions agreed upon at its acquisition in terms of section 9(1).
- (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 Head of Department against the refusal.
- (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.

8. Management of public records

- (1) Subject to the provisions of this Act, the Provincial Archivist is 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 may be transferred to an archives repository, destroyed, erased or otherwise disposed off without the written authorization of the Provincial Archivist;
 - (b) the Provincial Archivist must —
 - (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 Provincial Archivist must inspect public records in so far as such inspection may be necessary for the performance of his or her functions under the 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, may be done only with the consent of the head of the governmental body concerned.
- (3) The responsible Member may make regulations as to the management and care of public records in the custody of governmental bodies.
- (4) The Provincial Archivist may from time to time issue directives and instructions, not inconsistent with this Act, as to the management and care of public records in the custody of governmental bodies.
- (5) The head of a governmental body must, 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.
- (6) The records manager is responsible to see to it that the governmental body complies with the requirements of this Act.
- (7) Additional powers and functions may be prescribed to a records manager.

9. Acquisition and management of non-public record

- (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.
- (2) Subject to any such conditions as may be applicable, non-public records acquired under subsection (1), must be deposited in the archives repository determined by the Provincial Archivist.
- (3) No person or institution having non-public records in his or her custody, which are recorded on the provincial list referred to in section 5(1)(c), may destroy, export or otherwise dispose off such records without —
- (a) reporting to the Provincial Archivist his or her intention to so dispose off such records at least 90 days in advance of such action; and
 - (b) securing the approval of the Provincial Archivist for such action.

Chapter IV General provisions

10. 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,is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment.
- (2) Any person who fails to comply with section 9, is guilty of an offence and liable on conviction to a fine not exceeding R10 000.00 or imprisonment for a period not exceeding 2 years, or both such fine and imprisonment.
- (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 Head of Department.

11. Regulations

- (1) The responsible Member may, by notice in the *Provincial Gazette* make regulations regarding —
 - (a) the establishment of a Provincial Advisory Archives Council and to provide for its constitution, functions and remuneration;
 - (b) the terms and conditions governing the transfer of records under section 6(2);
 - (c) 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;
 - (d) the management and care of public records in the custody of governmental bodies;
 - (e) requirements regarding the designation of an official on the establishment of a governmental body to be the records manager of the body;
 - (f) additional powers and functions of record managers; and
 - (g) any matter which is necessary or expedient to be prescribed in order to achieve or promote the objects of this Act.

12. Short title and commencement

This Act is called the Northern Cape Provincial Archives Act, 2013, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.