

ARCHIVES ACT.

Act No. 46, 1960.

Elizabeth II, No. 46, 1960. An Act to establish an Archives Authority of New South Wales and to define its powers, authorities, duties and functions; to provide for the transfer to that Authority of certain public records; and for purposes connected therewith. [Assented to, 17th November, 1960.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title and commencement. 1. (1) This Act may be cited as the "Archives Act, 1960".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Definitions. 2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

"Archives Office of New South Wales" means the office and repository established under section ten of this Act.

"Authority" means the Archives Authority of New South Wales established by this Act.

"By-laws" means by-laws made under this Act.

"Prescribed" means prescribed by this Act or regulations.

"Public archives" means all public records that have ceased to be in current use in the public office in which they were originally made or received or in the public office in whose custody they have been placed after being so made or received.

"Public

“Public office” means any department, office, commission, No. 46, 1960.
board, corporation, agency, or instrument of any kind, performing any functions of any branch of the Government of New South Wales, and any office or body proclaimed under subsection three of this section to be a public office for the purposes of this Act, but does not include any local authority that has not been proclaimed as aforesaid.

“Public records” means papers, documents, records, registers, books, maps, plans, drawings, photographs, cinematograph films and sound recordings, of any kind, made or received in the course of his official duties by any person employed in a public office and includes copies of public records as hereinbefore defined.

“Regulations” means regulations made under this Act.

“State archives” means public archives which are for the time being deposited and preserved in the Archives Office of New South Wales or in a branch of that office.

(2) In this Act, references to “the public office from which any public records were made available to the Authority”, and like expressions, include references to any public offices to which the administrative functions of such firstmentioned public office have been transferred.

(3) The Governor may by proclamation published in the Gazette order that any office or body (including a local authority) specified in the order shall be a public office for the purposes of this Act.

3. (1) There shall be an Archives Authority of New South Wales.

Archives
Authority
of New
South
Wales.

(2) The Authority shall be a body corporate under the name of “The Archives Authority of New South Wales” with perpetual succession and a common seal, and shall be capable by that name of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer.

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(3) The Authority shall, subject to this Act, have power to take, purchase, hold, grant, alienate, demise or otherwise dispose of or deal with real and personal property :

Provided that the Authority shall not, except with the approval of the Governor, alienate, mortgage, charge or demise any real property.

Members
of the
Authority.

4. (1) The Authority shall consist of nine members who shall be appointed by the Governor.

(2) Of such members—

- (a) one shall be a judge of the Supreme Court of New South Wales, a member of the Industrial Commission of New South Wales established under the Industrial Arbitration Act, 1940, as amended by subsequent Acts, or a judge of a District Court established under the District Courts Act, 1912, as amended by subsequent Acts;
- (b) one shall be a person nominated jointly by the President of the Legislative Council and the Speaker of the Legislative Assembly;
- (c) one shall be a person nominated by The Trustees of the Public Library of New South Wales;
- (d) three shall be persons nominated by the Minister to represent the University of Sydney, the University of New South Wales, the University of New England and such historical and archival bodies as the Minister thinks fit;
- (e) one shall be a person nominated by the Public Service Board;
- (f) one shall be a person nominated by the Premier to represent those public offices which are not subject to the provisions of section nine of the Public Service Act, 1902, as amended by subsequent Acts;
- (g) one shall be such one of the persons holding office as Director-General of Education or Deputy Director-General of Education as the Minister may nominate.

(3)

(3) (a) Any nomination under subsection two of this section shall be made within the time and in the manner prescribed. No. 46, 1960.

(b) If for any reason any such nomination is not submitted within the time and in the manner prescribed with respect thereto, the Minister may nominate such person as he thinks fit and such person shall be deemed to have been validly nominated in accordance with the appropriate paragraph of the said subsection two.

(4) (a) The members shall hold office for such period not exceeding four years as may be prescribed.

(b) The regulations may provide for the retirement in rotation of members and for that purpose may provide that, on the first appointment of members of any particular class after the introduction of rotational retirement, the members, or such number as may be prescribed of members, of that class shall be appointed for a lesser period than that prescribed pursuant to paragraph (a) of this subsection.

(c) All retiring members shall, unless otherwise disqualified, be eligible for reappointment.

(5) Where a casual vacancy occurs in the office of a member the Governor may appoint a person to the vacant office. Such person shall have the like qualification, or be appointed on the like nomination, (if any) as that of the member whose office has become vacant and shall hold office for the residue of his predecessor's term of office.

(6) The provisions of the Public Service Act, 1902, or any Act amending that Act, shall not apply to the appointment of any member, and a member shall not, as a member, be subject to the provisions of any such Act.

5. A member shall be deemed to have vacated his office if he— Vacancies—
how caused.

- (a) dies;
- (b) resigns his office by writing under his hand addressed to the Governor;
- (c) becomes bankrupt, compounds with his creditors or makes any assignment of his salary or estate for their benefit;

(d)

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- (d) becomes a mentally ill person, a protected person, or an incapable person, within the meaning of the Mental Health Act, 1958;
- (e) is absent from three consecutive ordinary meetings of the Authority of which notice has been given to him personally or in the ordinary course of post and is not before the expiration of six weeks after the last of such meetings excused by the Authority for his absence from such meetings;
- (f) being a member appointed pursuant to paragraph (a) or (g) of subsection two of section four of this Act, ceases to hold the office by virtue of which he was so appointed;
- (g) is removed from office by the Governor.

Chairman.

6. (1) The Governor shall appoint one of the members to be chairman, and another to be deputy-chairman, of the Authority. The chairman and the deputy-chairman shall hold office as such from the date of his appointment as chairman or deputy-chairman, as the case may be, until the expiry of his term of office as a member of the Authority or where a lesser period has been prescribed until the expiration of that lesser period.

(2) At every meeting of the Authority the chairman, or in his absence the deputy-chairman, shall preside, but if the chairman and the deputy-chairman are both absent, the members of the Authority present shall elect a person from amongst their number to preside as chairman.

**Procedure,
quorum,
etc.**

7. (1) The procedure for the calling of meetings of the Authority and the conduct of business at such meetings shall, subject to any by-laws in relation thereto in force under this Act, be as determined by the Authority.

(2) Any duly convened meeting of the Authority at which a quorum is present shall be competent to transact any business of the Authority and shall have and may exercise and perform all the powers, authorities, duties and functions by this Act conferred upon the Authority.

(3) Any four members shall be a quorum for the purposes of any meeting of the Authority.

(4)

(4) (a) All questions which come before the Authority shall be decided at any meeting duly convened, at which a quorum is present, by a majority of the votes of the members present. No. 46, 1960.

(b) The chairman at any such meeting shall have a vote; and in the case of an equality of votes a second or casting vote.

8. (1) No act or proceeding of the Authority shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member. Validity of proceedings, etc.

(2) All acts and proceedings of the Authority shall, notwithstanding the subsequent discovery of any defect in the appointment of any member thereof, or that any member was disqualified to act, be as valid as if such member had been duly appointed and was qualified to act and had acted as a member of the Authority, and as if the Authority had been properly and fully constituted.

9. (1) The common seal of the Authority shall be kept in such custody as the Authority directs, and shall not be used except upon a resolution of the Authority. Common seal.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to any document, and shall presume that it was duly affixed.

10. The Authority shall establish an office and repository to be known as the "Archives Office of New South Wales" in which such public archives as are made available to the Authority and are considered by it to be worthy of preservation shall be deposited and preserved as State archives. Archives Office of New South Wales.

11. The Authority either alone or by agreement and in conjunction with any other person or body may establish, maintain and control within New South Wales branches of the Archives Office of New South Wales. Branches.

An agreement between the Authority and any other person or body shall not be entered into for the purposes of this section unless the Governor has first approved of the agreement.

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Officers
and em-
ployees.

12. (1) The Governor may, under and subject to the provisions of the Public Service Act, 1902, as amended by subsequent Acts, appoint and employ a Principal Archivist, and such other officers and employees as may be necessary for the purposes of this Act.

(2) The Principal Archivist and the other officers and employees so employed shall be subject to the provisions of the Public Service Act, 1902, and any Act amending that Act, during the tenure of their office or employment.

(3) The Principal Archivist shall be the chief executive officer of the Authority and, subject to any agreement referred to in section eleven of this Act, shall have the care of the State archives and of any public archives in the custody or under the control of the Authority, and shall have such other duties in relation to the State archives and any public archives in the custody or under the control of the Authority, and the management of the Archives Office of New South Wales and any branch thereof, as may be prescribed by the by-laws.

(4) Subject to the provisions of the Public Service Act, 1902, and any Act amending that Act, the Authority shall have the control and direction of the Principal Archivist and of any officers and employees employed for the purposes of this Act in the exercise of their powers and duties under this Act.

Powers
and
duties of
Authority.

13. (1) The Authority shall undertake the preservation, storage, arrangement, repair, cataloguing and calendaring, and have the custody and control, of the State archives and shall have the management of the Archives Office of New South Wales.

(2) The Authority may—

- (a) with the consent of the person having the custody or control of any public archives that are not in the custody or under the control of the Authority or a public office, make photographic or other copies of such public archives;

(b)

- (b) with the consent of the person in charge of the public office from which any public records were made available to the Authority, supply photographic or other copies of any such public record to any person upon payment by him to the Authority of the fees prescribed by the by-laws;
- (c) acquire by purchase any public archive not in the custody or under the control of the Authority;
- (d) upon such terms and conditions as the Authority sees fit, make any public records in the custody or under the control of the Authority available to any public office for such period as the Authority thinks fit;
- (e) with the approval of the Minister, delegate to any person or body any of its powers or duties under this section;
- (f) with the approval of the Minister, arrange for the publication, upon such terms and conditions as the Authority thinks fit, of any of the State archives or of any articles prepared from material in the State archives and, in the case of articles not prepared by the Authority, offered to the Authority by the author for publication by the Authority.

14. (1) Public records in the custody or under the control of a public office shall not be destroyed or disposed of otherwise than in accordance with this section.

Transfer
of archives
to the
Authority.

(2) Before any such public records are destroyed or disposed of it shall be the duty of the person in charge of the public office in whose custody or under whose control the public records are to notify the Authority of his intention to destroy or dispose of such public records and in such notification to specify the nature of the public records to which the notification relates.

(3) The Authority may inspect any such public records referred to in any notification received by it under subsection two of this section and if it requires such public records to be made available to it shall so inform the person who caused the notification under that subsection to be given to it.

Subject

No. 46, 1960. Subject to this section, any such public records shall be made available to the Authority accordingly, and in the same form and order as that in which they are maintained in the public office from which they are so made available.

(4) Where—

- (a) within two months after a notification under subsection two of this section has been given to the Authority, the Authority does not, in accordance with subsection three of this section, inform the person who caused the notification to be given that it requires the public records referred to in the notification to be made available to it; or
- (b) within two months after the Authority has so informed such person it has not taken possession of the public records referred to in the notification,

this section shall not thereafter apply to the destruction or disposal of the public records referred to in the notification.

(5) The provisions of this section apply to any public record referred to in subsection one of this section notwithstanding any enactment, whether passed before or after the commencement of this Act, prohibiting any person from disclosing or divulging any information contained in any such public record and no person shall be liable to a penalty under any such enactment by virtue of anything done under this section.

(6) (a) Where the person in charge of any public office makes available to the Authority any public records he may, by notice in writing given to the Authority—

- (i) inform the Authority that any such public record contains information, the disclosure or divulging of which by any person is by virtue of any enactment prohibited; or
- (ii) impose such conditions as he thinks fit prohibiting the Authority from making any such public record available for inspection by any person for any period specified in the notice or restricting the class of persons to whom the Authority may make any such public record available for inspection.

(b)

(b) Any conditions referred to in subparagraph ^{No. 46, 1960.} (ii) of paragraph (a) of this subsection may be varied or revoked by the person for the time being in charge of the public office from which the public records were made available to the Authority.

(c) Notwithstanding any other provision of this Act, it shall be the duty of the Authority and every member and employee thereof—

- (i) not to disclose or divulge any information contained in any public record referred to in any notice given to the Authority under subparagraph (i) of paragraph (a) of this subsection except with the approval of the person in charge of the public office from which such public record was made available to the Authority; and
- (ii) not to make any public record to which a notice given under subparagraph (ii) of paragraph (a) of this subsection relates available for inspection by any person in contravention of any condition applicable to such public record under this subsection.

15. (1) Nothing in this Act shall preclude the person in charge of any public office from destroying or disposing of any public records in the custody, or under the control, of that public office if he has been so authorised by the Authority.

Destruction
of public
records
may be
authorised
by
Authority.

(2) Any authority given by the Authority for the purposes of subsection one of this section may relate to particular public records or to public records of a class specified in the authority.

(3) The Authority shall keep a written record of all authorities given by it for the purposes of subsection one of this section.

16. The Authority may sell or destroy or otherwise dispose of any public records in its custody or under its control.

Disposal
of public
records
by the
Authority.

17.

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Return
of public
archives
to public
offices.

17. Where the person in charge of any public office notifies the Authority in writing that any public record which was made available to the Authority from that public office is required for use in that public office, the Authority shall, if it has the custody or control of that public record, return it to that person.

Prohibition
on sale,
destruction
or export
of certain
public
archives.

18. (1) No person shall, without the written permission of the Authority, sell or destroy or take or send out of New South Wales any public archive, not being a public archive in the custody or under the control of the Authority.

(2) Any person guilty of an offence under this section shall be liable to a penalty not exceeding one hundred pounds.

Certificate
of
destruction
of public
records.

19. A certificate under the common seal of the Authority that any public record has been destroyed by the Authority shall be prima facie evidence of the fact so certified.

Power to
accept
gifts, etc.

20. (1) The Authority shall have power to acquire by gift inter vivos, bequest or devise, any property for any of the purposes of this Act, and to agree to the condition of such gift, bequest or devise.

(2) The rule of law relating to perpetuities shall not apply to any such condition to which the Authority has agreed.

(3) Nothing in the Stamp Duties Act, 1920, or in any Act amending that Act, whether passed before or after the commencement of this Act, shall apply to any real or personal property of any nature or kind whatsoever comprised in any gift inter vivos, devise or bequest made or to be made to the Archives Office of New South Wales or any branch of that office or to the Authority.

By-laws.

21. (1) The Authority may make by-laws, not inconsistent with this Act or the regulations, for and with respect to—

(a) the general management and control of the Archives Office of New South Wales and any branches thereof;

(b) regulating the conduct of the proceedings of the members of the Authority, including the times, places and conduct of their meetings;

(c)

- (c) the admission (including charges therefor) or ^{No. 46, 1960.} exclusion of the public or any person to or from the Archives Office of New South Wales or any part thereof or any branch of that office or any part of any such branch;
- (d) prohibiting the copying of any of the State archives; the conditions upon which any State archives may be borrowed or copied by any body or person;
- (e) the sale of copies of State archives and any publications published by the Authority (including the charges to be made for such copies and publications);
- (f) the duties of the Principal Archivist appointed under this Act; and
- (g) generally the carrying out of the purposes of this Act.

Any by-law made under this subsection with respect to any branch of the Archives Office of New South Wales or any State archives in the custody or under the control of any such branch shall be subject to any agreement made under the provisions of section eleven of this Act with respect to that branch or the State archives in its custody or under its control.

(2) Any by-law made under paragraph (a), (c) or (d) of subsection one of this section may impose a penalty not exceeding twenty pounds for any breach thereof.

(3) Every by-law shall be sealed with the common seal of the Authority, shall be submitted for the consideration and approval of the Governor, and when so approved shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the by-law.

(4) A copy of every such by-law shall be laid before each House of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

No. 46, 1960. If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after such by-law has been laid before such House disallowing any by-law or part thereof, such by-law or part shall thereupon cease to have effect.

Proceedings for offences. **22.** All proceedings for offences under section eighteen of this Act or the by-laws shall be disposed of summarily before a stipendiary magistrate or any two justices in petty sessions.

Annual reports. **23.** (1) The Authority shall, as soon as practicable, and not more than three months, after the thirty-first day of December in each year cause a report of its work and activities during the year ending on that date to be prepared and forwarded to the Minister for presentation to Parliament.

(2) The Authority may include in such report a statement in respect of the year to which the report relates setting out any cases that have come to the notice of the Authority of any failure or neglect by any person to comply with or observe any of the provisions of this Act, including any case where an offence has been committed under section eighteen of this Act.

Accounts. **24.** (1) The Authority shall as soon as practicable, and not more than three months, after the thirtieth day of June in each year prepare and transmit to the Minister for presentation to Parliament statements of accounts in a form approved by the Auditor-General exhibiting a true and correct view of the financial position and transactions of the Authority.

(2) The accounts of the Authority shall be audited by the Auditor-General, who shall have, in respect thereof, all the powers conferred on the Auditor-General by any law now or hereafter in force relating to the audit of public accounts; and the Audit Act, 1902, and Acts amending the same, shall apply to the members and officers and employees of the Authority in the same manner as it applies to accounting officers of public departments.

25. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed in relation to any matter within the powers and functions of the Authority and generally for carrying out or giving effect to the objects of the Authority and to this Act. No. 45, 1960.
Regulations.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified therein;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.