

(English text signed by the Premier)
(Assented to 16 May 2005)

ACT

To provide for a Provincial Archives and Records Service for the province of the Western Cape; to provide for the proper management and care of public records in the province of the Western Cape; to provide for the preservation and use of a provincial archival heritage, and to provide for matters connected therewith.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - (1) **“appraisal”** means the archival function of determining the eventual disposal of records; 5
 - (2) **“archives”** means records in the custody of an archives repository;
 - (3) **“archives repository”** means any archives repository contemplated in section 6;
 - (4) **“Committee”** means the Western Cape Archives Advisory Committee established in terms of section 10; 10
 - (5) **“custody”** means the control of records based on the physical possession thereof;
 - (6) **“disposal authority”** means a written authority issued in terms of section 9(2)(a) specifying the records to be transferred into the custody of the Service or specifying records to be otherwise disposed of; 15
 - (7) **“document”** means any recorded information or object which can be treated as a unit;
 - (8) **“electronic records”** means information which is generated and captured electronically and stored by means of computer technology; 20
 - (9) **“electronic record system”** means an electronic system in which information is generated, captured and stored electronically, including source documents and output, software applications, operating systems, data and metadata;
 - (10) **“governmental body”** means any legislative, executive, judicial or administrative organ of state, including a statutory body, commission, board or council, in the provincial or local sphere of government in the province of the Western Cape; 25
 - (11) **“head of a governmental body”** means the chief executive officer of a governmental body or the person acting as such, or the head of a provincial department or a person acting as such; 30
 - (12) **“non-public record”** means recorded information, regardless of the form or medium thereof, created or received by a private individual or a body other than a body defined as a governmental body;
 - (13) **“prescribe”** means prescribe by regulation; 35
 - (14) **“provincial department”** means the provincial department in the Western Cape responsible for cultural matters;
 - (15) **“Provincial Minister”** means the member of the Western Cape Provincial Cabinet responsible for cultural affairs and related matters;
 - (16) **“public record”** means recorded information, regardless of the form or medium thereof, created or received by a governmental body in pursuance of its activities; 40
 - (17) **“Public Service Act”** means the Public Service Act, 1994;

- (18) **“record”** means recorded information, regardless of the form or medium thereof;
- (19) **“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 the form thereof; 5
- (20) **“records classification system”** means a plan for the systematic identification and arrangement of business activities and/or records into categories according to logically structured connections, methods and procedural rules;
- (21) **“records management”** means a process of ensuring the proper creation, arrangement, maintenance, use and disposal of documents and records to achieve efficient, transparent and accountable governance; 10
- (22) **“regulation”** means any regulation made under this Act;
- (23) **“Service”** means the Provincial Archives and Records Service of the Western Cape established in terms of section 2;
- (24) **“this Act”** includes any regulations made thereunder. 15

Establishment of Provincial Archives and Records Service of the Western Cape

2. The Provincial Archives and Records Service of the Western Cape, a component within the provincial department, is established.

Objects of Service

3. The objects of the Service are to— 20
- (a) preserve public and non-public records of enduring value for use by the public and the State;
- (b) make such records accessible, and to promote their use by the public;
- (c) ensure the proper management and care of all public records;
- (d) collect non-public records of enduring value and 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; 25
- (e) promote cooperation and coordination between institutions having custody of non-public records that are of enduring value; 30
- (f) participate in the national automated archival information retrieval system;
- (g) promote an awareness of archives and records management, and to encourage archival and records management activities; and
- (h) generally promote the preservation and use of a provincial archival heritage.

Appointment of Head of Service 35

4. A Head of the Service must be appointed in terms of the provisions of the Public Service Act and must have the relevant professional experience and an appropriate archival qualification.

Powers of Head of Service

5. (1) The Head of the Service is responsible for the management of the Service. 40
- (2) The Head of the Service may—
- (a) take any measures, as he or she may deem necessary, to arrange, describe and retrieve records;
- (b) provide information, consultation, research and other services related to records; 45
- (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) provide training in archival techniques and the management of records;
- (e) cooperate with organisations interested in archival matters or the management of records; 50
- (f) provide professional and technical support in aid of archival activities and the archival community;

- (g) require of a person who, while researching a publication or dissertation, has made use of records in the custody of the Service, to furnish a copy of the publication or dissertation to the Service;
 - (h) with the concurrence of the Provincial Minister, exempt a governmental body from any provision of this Act; and 5
 - (i) 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 Service.
- (3) The Head of the Service may—
- (a) in the performance of his or her duties, be assisted by officers and employees appointed in terms of the Public Service Act; and 10
 - (b) subject to any conditions, in writing delegate a power or assign a duty to a member of the staff and may at any time in writing withdraw such delegation or assignment.

Custody and preservation of records

6. (1) The Provincial Minister may from time to time establish archives repositories under the control of the Head of the Service for the custody of records. 15
- (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 of the Provincial Parliament of the Western Cape requires such records to be kept in the custody of a particular governmental body or person; 20
 - (b) the Head of the Service, after consultation with the head of a governmental body, may identify records which—
 - (i) must remain in the custody of a governmental body; or 25
 - (ii) must be transferred to an archives repository before they have been in existence for 20 years;
 - (c) the Head of the Service may defer the transfer of any public records; and
 - (d) the Head of the Service may grant permission for any public records to be transferred to an archives repository before they have been in existence for 20 years. 30
- (3) The Provincial Minister may prescribe terms and conditions governing the transfer of records under subsection (2).
- (4) The Head of the Service must take such measures as are necessary to preserve and restore records. 35
- (5) The Head of the Service may destroy or otherwise dispose of any public record in the custody of the Service where the retention of the record, according to existing disposal authorities issued by the Head of the Service, is no longer deemed necessary.

Acquisition of non-public records

7. (1) The Head of the Service, on behalf of the Provincial Government of the Western Cape, after obtaining approval from the head of the provincial department, may 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 are of enduring value and provincial significance and which cannot be more appropriately preserved by another institution. 40 45
- (2) Subject to such conditions as may be applicable, non-public records acquired under subsection (1) must be deposited in the archives repository determined by the Head of the Service.

Access and use

8. (1) Subject to any other Act that deals with the access to public records— 50
- (a) a public record in the custody of the Service must 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; or
 - (b) the Head of the Service may, upon request, grant 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. 55

(2) A non-public record in the custody of the Service must be available for public access subject to any conditions agreed upon at the time of its acquisition in terms of section 7(1).

(3) Notwithstanding subsection (1), the Head of the Service may refuse access to a record on the grounds of its fragile condition, if alternative procedures provide for access to the content of such records. 5

(4) The Provincial Minister may make regulations regarding 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 Service. 10

Records management

9. (1) Subject to the provisions of this Act, the Head of the Service is responsible for the proper management 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 of without the written authorisation of the Head of the Service; 15

(b) the Head of the Service must—

(i) determine record classification systems to be applied by governmental bodies; 20

(ii) determine conditions subject to which records may be microfilmed or electronically reproduced; and

(iii) determine conditions subject to which electronic records systems should be managed;

(c) the Head of the Service must 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 the public records which contain information, the disclosure of which is restricted by any other Act of Parliament, must be done only with the consent of the head of the governmental body concerned. 25 30

(3) The Head of the Service may from time to time issue directives and instructions, which must not be inconsistent with the regulations, as to the management and care of public records in the custody of governmental bodies.

(4) The Provincial Minister may make regulations regarding the management and care of public records in the custody of governmental bodies. 35

(5) (a) 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, appoint an official of the body to be the records manager of the body.

(b) The records manager is responsible for ensuring that the governmental body complies with the requirements of this Act. 40

(c) The Head of the Service may assign additional powers and functions to a records manager.

Archives Advisory Committee

10. (1) The Provincial Minister, by notice in the *Provincial Gazette*, must establish an advisory committee to be known as the Western Cape Archives Advisory Committee. 45

(2) The Committee must consist of at least five but not more than nine members appointed by the Provincial Minister.

(3) Members of the Committee must be—

(a) South African citizens;

(b) permanently resident in the province of the Western Cape; 50

(c) demographically representative of the inhabitants of the province of the Western Cape, and

(d) knowledgeable about, or have an interest in archival matters.

Appointment of members of Committee

11. (1) The Provincial Minister appoints the members of the Committee for a period not exceeding three years. The Committee consists of— 55

(a) the Head of the Service;

- (b) two persons nominated by the Western Cape Branch of the South African Society of Archivists; and
- (c) other persons from the list of candidates nominated by way of a public process.

(2) The Provincial Minister must by notice in the *Provincial Gazette* and such other printed media as the Provincial Minister may consider appropriate, invite the general public to nominate persons for appointment as members of the Committee. 5

(3) If the organisation referred to in subsection (1)(b) fails to nominate two persons, the Provincial Minister may appoint two persons on behalf of that organisation.

(4) Any member of the Committee, on expiry of his or her term of office, may be reappointed as a member of the Committee, except the Head of the Service, who is the only permanent member of the Committee. 10

Chairperson and deputy chairperson

12. (1) The Provincial Minister must designate a member of the Committee (other than the Head of the Service) as the chairperson and must determine the date and place of the first meeting of the Committee. 15

(2) The Committee, at its first meeting, must from its members (other than the Head of the Service) appoint a deputy chairperson.

(3) When the chairperson of the Committee is absent or not able to perform his or her functions as chairperson, the deputy chairperson must act as chairperson and must for such period carry out all the powers and perform all the duties of the chairperson. 20

(4) If the chairperson vacates his or her post, the Provincial Minister must appoint another member as chairperson in his or her place.

(5) If both the chairperson and deputy chairperson are absent from a meeting of the Committee, the members present at the meeting must elect a member present (other than the Head of the Service) to act as chairperson for that meeting. 25

(6) The position of chairperson becomes vacant when—

- (a) the term of that member's office expires;
- (b) that member resigns; or
- (c) that member ceases to be a member of the Committee. 30

(7) A member may not be reappointed chairperson.

Dismissal

13. The Provincial Minister may dismiss a member of the Committee, except the Head of the Service, only on grounds of misconduct, inability or incompetence and only after compliance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000). 35

Filling of vacancies

14. If a vacancy arises before the expiry of the normal term of office of a member, the Provincial Minister may appoint a person for the unexpired period of such member's term of office in accordance with the provisions of section 11(2). 40

Objects and functions of Committee

15. The objects and functions of the Committee are—

- (a) to promote, complement and support the objects and functions of the Service as mentioned in section 3 of this Act;
- (b) to advise the Provincial Minister on issues relating to archival and record management matters; 45
- (c) to advise and assist the Head of the Service in carrying out the objects and functions of the Service; and
- (d) to approve the appraisal policy of the Service and monitor its implementation.

Internal procedures and rules of Committee 50

16. (1) The Committee must determine its own procedures by compiling rules in respect of—

- (a) the calling of meetings;
- (b) the procedures at meetings;
- (c) the frequency of meetings; provided that at least two meetings must be called annually; and 55

(d) the election of a deputy chairperson.

(2) The quorum for a meeting is a majority of all the appointed members of the Committee.

(3) The Committee takes decisions by a resolution of the majority of members present at a meeting and in the case of an equality of votes, the person presiding at the meeting has a casting vote in addition to a deliberative vote. 5

Allowances

17. (1) Any member of the Committee who is not in the full-time employ of the State may be paid from the funds of the provincial department such meeting allowances as are determined by the Provincial Minister in concurrence with the Provincial Minister responsible for finance in the province of the Western Cape. 10

(2) A member referred to in subsection (1) may from funds of the provincial department be reimbursed in respect of expenses incurred by him or her in the performance of the functions of the Committee, as determined by the Provincial Minister. 15

Limitation of liability

18. The Provincial Administration: Western Cape and any provincial department or any person employed in the Service of either will not be liable for the consequences of any action taken in good faith and without negligence in terms of this Act.

Offences and penalties 20

19. (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 not exceeding R10 000 or imprisonment for a period not exceeding two years or both such fine and imprisonment. 25

Transitional arrangements

20. (1) The person who immediately prior to the commencement of this Act performed the functions of the acting head of the Western Cape Provincial Archives component of the National Archives of South Africa under the National Archives of South Africa Act, 1996 (Act 43 of 1996) continues in office as the acting head of the Service until the Head of the Service is appointed in terms of section 4. 30

(2) Every public servant who immediately prior to the commencement of this Act performed functions as a member of staff employed by the National Department of Arts and Culture in the Province of the Western Cape in relation to archival and record management matters becomes a member of the staff of the provincial department employed in the Provincial Archival and Records Service in the Western Cape, from the date of commencement of this Act. 35

(3) Any record in the custody of the said acting head on the day immediately prior to the commencement of this Act is hereby transferred to the Head of the Service, subject to any terms and conditions that were applicable to such records on that day. 40

Regulations

21. The provincial Minister may make regulations regarding any matter which in terms of this Act is required or permitted to be prescribed or done by regulation, and generally, regarding any matter in respect of which it is necessary or expedient to make regulations in order to achieve or promote the objects of this Act. 45

Short title and commencement

22. This Act is called the Provincial Archives and Records Service of the Western Cape Act, 2005, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*. 50