

TASMANIA

ARCHIVES AMENDMENT BILL 2004

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ARCHIVES AMENDMENT BILL 2004

*(Brought in by the Minister for Education, the Honourable
Paula Catherine Wriedt)*

A BILL FOR

**An Act to amend the *Archives Act 1983* and the
*Government Business Enterprises Act 1995***

Be it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled,
as follows:

PART 1 – PRELIMINARY

Short title

1. This Act may be cited as the *Archives Amendment Act 2004*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

PART 2 – ARCHIVES ACT 1983 AMENDED**Principal Act**

3. In this Part, the *Archives Act 1983** is referred to as the Principal Act.

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of “local authority” from subsection (1) and substituting the following definition:

“local authority” means any –

- (a) council; or
 - (b) body corporate established by or under an Act or in the exercise of prerogative rights of the Crown and having jurisdiction limited to a district, locality or part of the State;
- (b) by omitting the definition of “State authority” from subsection (1) and substituting the following definition:

“State authority” means a body, an authority, a royal commission or a board of enquiry, that is not a Government department or a local authority, whether that body,

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authority, royal commission or board is incorporated or not, and that is established or constituted by or under an Act or in the exercise of prerogative rights of the Crown where –

- (a) that body, authority, royal commission or board, or its governing authority, wholly or partly comprises a person appointed by the Governor, a Minister or another State authority; or
 - (b) the Crown has a controlling interest, or is a major shareholder, in that body, authority, royal commission or board;
- (c) by inserting “or” after “record;” in paragraph (a) of the definition of “State record” in subsection (1);
- (d) by omitting “authority –” from paragraph (c) of the definition of “State record” in subsection (1) and substituting “authority; or”;
- (e) by inserting the following paragraph after paragraph (c) in the definition of “State record” in subsection (1):
 - (d) any other record that was at any time a record mentioned in paragraph (a), (b) or (c) –
- (f) by omitting subsection (4).

Section 7 amended (Appointment of State Archivist, &c.)

5. Section 7(1) of the Principal Act is amended by omitting “may” and substituting “is to”.

Section 8 amended (Responsibilities and powers of State Archivist)

6. Section 8 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “archives;” and substituting “archives; and”;
- (b) by omitting from subsection (1)(b) “archives;” and substituting “archives; and”;
- (c) by omitting from subsection (1)(d) “Act.” and substituting “Act; and”;
- (d) by inserting the following paragraph after paragraph (d) in subsection (1):
 - (e) making and issuing guidelines in respect of any matter relating to the making and the keeping of State records.
- (e) by omitting from subsection (2) “is empowered to do all such things as appear to him to be necessary or expedient for ensuring the proper functioning of the Archives Office and may, without limiting the generality of the foregoing –” and substituting “has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of his or her functions and, in particular, has power to do the following:”;

- (f) by omitting paragraph (a) from subsection (2) and substituting the following paragraphs:
 - (a) provide facilities for access to the State archives;
 - (ab) provide systems, including indexes and guides, to enhance the accessibility of the State archives;
- (g) by omitting from subsection (2)(f) “purposes; and” and substituting “purposes;”;
- (h) by inserting in subsection (5) “, and provision of access to,” after “care of”;
- (i) by omitting subsections (7) and (8).

Section 9 amended (Power to accept gifts, &c.)

7. Section 9(2) of the Principal Act is amended by omitting “equity” and substituting “law”.

Section 10 amended (Preservation of State records)

8. Section 10 of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:
 - (1)** The relevant authority –
 - (a) is to keep proper records in respect of the business of the Government department, State authority or local authority for which the relevant authority is responsible; and

- (b) is to cause all such records to be preserved and accessible until they are dealt with in accordance with this Act; and
- (c) may, in the name of the Government department, State authority or local authority, take legal proceedings for the recovery of any such records if the relevant authority no longer has legal custody of them.

(b) by omitting from subsection (2)(c) “, organization, and preservation”.

Section 10A inserted

9. After section 10 of the Principal Act, the following section is inserted in Division 1:

State Archivist may issue guidelines

10A. (1) The State Archivist may, by written instrument, issue guidelines to a relevant authority in respect of any matter relating to the making and the keeping of State records.

(2) The State Archivist may, by written instrument, amend or revoke the guidelines.

(3) It is the duty of the relevant authority to take all reasonable steps to ensure that the guidelines are complied with.

Section 11 amended (Transfer of State records to Archives Office)

10. Section 11 of the Principal Act is amended by inserting after subsection (2) the following subsection:

(2A) If the State Archivist grants an exemption under subsection (2), the State Archivist may also require the relevant authority to meet any conditions that the State Archivist considers appropriate in respect of the management of, and the provision of access to, the State records that are the subject of the exemption.

Section 13 amended (Compensation)

11. Section 13 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) In determining if an amount is fair and reasonable for the purposes of subsection (1), the Minister may –

- (a) take into consideration any one or more of the following matters:
 - (i) the price usually paid by an archival institution, a library or any other public institution collector for similar records;
 - (ii) the condition of the State records;
 - (iii) the present or potential future value of the State records for research;
 - (iv) the importance of the State records, in the context of other

records already held or sought by the State Archivist;

- (v) the expenses incurred by the person who had possession or control of the State records immediately before the records came into the possession of the State Archivist; and
- (b) obtain the opinion of a valuer, appointed under the *Income Tax Assessment Act 1997* of the Commonwealth, as to the likely value of the State records.

Section 16 amended (Certain persons prohibited from disclosing or divulging contents of certain records)

12. Section 16(4) of the Principal Act is amended as follows:

- (a) by omitting paragraph (d);
- (b) by omitting paragraph (f) and substituting the following paragraph:
 - (f) a person who is or who was employed in the department, whether before, on or after the commencement day.

Section 20 amended (Disposal, destruction, &c., of State records)

13. Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “of;” and substituting “of a State record; or”;
- (b) by omitting from subsection (1)(b) “of;” and substituting “of a State record; or”;
- (c) by inserting in subsection (1)(c) “a State record” after “ownership of”;
- (d) by inserting the following paragraph after paragraph (c) in subsection (1):
 - (ca) refuse to provide the State Archivist with the full name and residential address of the person for whom that person is acting as an agent in an arrangement under paragraph (b) or (c) for the transfer of a State record; or
- (e) by omitting from subsection (1)(d) “alter –” and substituting “alter a State record.”;
- (f) by omitting from subsection (1) “a State record.”;
- (g) by omitting subsections (3) and (4).

**PART 3 – GOVERNMENT BUSINESS
ENTERPRISES ACT 1995 AMENDED**

Principal Act

14. In this Part, the *Government Business Enterprises Act 1995** is referred to as the Principal Act.

Section 112 repealed

15. Section 112 of the Principal Act is repealed.

*No. 22 of 1995