

# Provincial Gazette Extraordinary

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# Buitengewone Provinsiale Koerant

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### PROVINCIAL NOTICE

The following draft Bill is hereby published for general information:

Provincial Archives and Records Service of the Western Cape Draft Bill.

Any person or organisation wishing to comment on the said Draft Bill is requested to lodge such comment in writing before or on 6 February 2004:

(a) by posting it to:

The Director:  
Provincial Library and Archive Services (Mr J. Swiegelaar)  
P. O. Box 2108  
CAPE TOWN  
8000

(b) by e-mail to:

[jswiegel@pawc.wcape.gov.za](mailto:jswiegel@pawc.wcape.gov.za)

(c) by fax to:

J. Swiegelaar  
(021) 419-7541

J. SWIEGELAAR  
DIRECTOR: LIBRARY AND ARCHIVE SERVICES

## INHOUD

### PROVINSIALE KENNISGEWING

Die volgende konsep Wetsontwerp word hierby vir algemene inligting gepubliseer:

Konsep Wetsontwerp op die Provinsiale Argief- en Rekorddiens van Die Wes-Kaap.

Enige persoon of organisasie wat kommentaar oor die genoemde Konsep Wetsontwerp wens te lewer, word versoek om sodanige kommentaar skriftelik te lewer voor of op 6 Februarie 2004:

(a) deur dit te pos aan:

Die Direkteur:  
Biblioteek- en Argiefdienste (J. Swiegelaar)  
Posbus 2018  
KAAPSTAD  
8000

(b) deur dit in te e-pos aan:

[jswiegel@pawc.wcape.gov.za](mailto:jswiegel@pawc.wcape.gov.za)

(c) deur dit te faks aan:

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J. SWIEGELAAR  
DIREKTEUR: BIBLIOTEEK- EN ARGIEFDIENSTE

P.N. 2/2004

14 January 2004

**PROVINCIAL ARCHIVES AND RECORDS SERVICE OF THE  
WESTERN CAPE DRAFT BILL**

**DRAFT BILL**

To provide for a Provincial Archives and Records Service for 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 Western Cape, as follows:—

**Definitions**

1. In this Act, unless the context indicates otherwise—

“**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;

“**Committee**” means the Western Cape Archives Advice Committee established in terms of section 10;

“**custody**” means the control of records based on the physical possession thereof;

“**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 Provincial Archives and Records Service or specifying records to be otherwise disposed of;

“**electronic records**” means information which is generated, captured and stored electronically and stored by means of computer technology;

“**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;

“**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;

“**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;

“**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;

“**prescribe**” means prescribe by regulation;

“**provincial department**” means the provincial department in the Western Cape responsible for cultural matters;

“**Provincial Minister**” means the member of the Western Cape Provincial Cabinet responsible for cultural affairs and related matters;

“**public record**” means recorded information, regardless of the form or medium thereof, created or received by a governmental body in pursuance of its activities;

“**Public Service Act**” means the Public Service Act, 1994, as amended;

“**record**” means recorded information, regardless of the form or medium thereof;

P.K. 2/2004

14 Januarie 2004

**KONSEPWETSONTWERP OP DIE PROVINSIALE ARGIEF-  
EN REKORDDIENS VAN DIE WES-KAAP**

**KONSEPWETSONTWERP**

Om voorsiening te maak vir 'n Provinsiale Argief- en Rekorddiens vir die Wes-Kaap; om voorsiening te maak vir die behoorlike bestuur en versorging van publieke rekords in die Provinsie Wes-Kaap; om voorsiening te maak vir die behoud en gebruik van 'n provinsiale argivale erfenis, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**DAAR WORD BEPAAL** deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

**Woordomskrywing**

1. In hierdie Wet, tensy dit uit die samehang anders blyk, beteken—

“**argiefbewaarplek**” enige argiefbewaarplek in artikel 6 bedoel;

“**argiewe**” rekords in bewaring by 'n argiefbewaarplek;

“**beskikkingsmagtiging**” 'n skriftelike magtiging uitgereik ingevolge artikel 9(2)(a) wat spesifiseer watter rekords in die bewaring van die Provinsiale Argief- en Rekorddiens oorgeplaas moet word of wat spesifiseer oor watter rekords daar op 'n ander wyse beskik moet word;

“**bewaring**” die beheer van rekords gebaseer op die fisiese besit daarvan;

“**Diens**” die Provinsiale Argief- en Rekorddiens van die Wes-Kaap uitgevolgde artikel 2 ingestel;

“**elektroniese rekords**” inligting wat elektronies gegeneer, vasgelê en gestoor word en deur middel van rekenaartegnologie gestoor word;

“**elektroniese rekordstelsel**” 'n elektroniese stelsel waarin inligting elektronies gegeneer, vasgelê en gestoor word, insluitende brondokumente en uitset, programmatuurtoepassings, bedryfstelsels, data en metadata,

“**hierdie Wet**” ook enige regulasies daarkragtens uitgevaardig;

“**hoof van 'n regeringsliggaam**” die hoof uitvoerende beampte van 'n regeringsliggaam of die persoon wat as sodanig waarneem, of die hoof van 'n provinsiale departement of die persoon wat as sodanig waarneem;

“**keuring**” die argivale funksie van die uiteindelijke beskikking oor rekords te bepaal;

“**Komitee**” die Wes-Kaapse Argiefadvieskomitee ingevolge artikel 10 ingestel;

“**nie-publieke rekord**” vasgelegde inligting, ongeag die vorm of medium, geskep of ontvang deur 'n private individu of 'n ander liggaam as 'n liggaam wat as 'n regeringsliggaam omskryf is;

“**opname**” enigiets waarop klank of beeld of albei vasgelê is of waarvan klank of beeld of albei gereproduseer kan word, ongeag die vorm;

“**provinsiale departement**” die provinsiale departement in die Wes-Kaap verantwoordelik vir kultuuraangeleenthede;

“**Provinsiale Minister**” die lid van die Wes-Kaapse Provinsiale Kabinet verantwoordelik vir kultuursake en verwante aangeleenthede;

“**publieke rekord**” vasgelegde inligting, ongeag die vorm of medium, geskep of ontvang deur 'n regeringsliggaam in die uitvoering van sy aktiwiteite;

“**regeringsliggaam**” enige wetgewende, uitvoerende, regsprekende of administratiewe staatsorgaan, insluitende 'n

“**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;

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

“**records management**” means a process of ensuring the proper creation, arrangement, maintenance, use and disposal of records to achieve efficient, transparent and accountable governance;

“**regulation**” means any regulation made under this Act,

“**Service**” means the Provincial Archives and Records Service of the Western Cape established in terms of section 2;

“**this Act**” includes any regulations made thereunder.

#### Establishment

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—
  - (a) to preserve public and non-public records of enduring value for use by the public and the State;
  - (b) to make such records accessible, and to promote their use by the public;
  - (c) to ensure the proper management and care of all public records;
  - (d) to 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;
  - (e) to promote cooperation and coordination between institutions having custody of non-public records that are of enduring value;
  - (f) to promote an awareness of archives and records management, and to encourage archival and records management activities; and
  - (g) to generally promote the preservation and use of a provincial archival heritage.

#### Appointment of Head of the Service

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

#### Powers of Head of the Service

5. (1) The Head of the Service is responsible for the management of the Service.
- (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;
  - (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;

statutêre liggaam, kommissie of raad, in die provinsiale of plaaslike regeringsfeer in die Provinsie Wes-Kaap;

“**regulasie**” enige regulasie kragtens hierdie Wet uitgevaardig;

“**rekord**” vasgelegde inligting, ongeag die vorm of medium;

“**rekordbestuur**” ’n proses om die behoorlike skepping, ordening, instandhouding en gebruik van en beskikking oor rekords te verseker ten einde doeltreffende, deursigtige en verantwoordbare bestuur te verkry;

“**rekordklassifikasiesstelsel**” ’n klassifikasieplan vir die identifisering, ordening, stoor en opsporing van rekords;

“**Staatsdienswet**” die Staatsdienswet, 1994, soos gewysig;

“**voorskryf**” by regulasie voorskryf.

#### Instelling

2. Die Provinsiale Argief- en Rekorddiens van die Wes-Kaap, ’n komponent binne die provinsiale departement, word ingestel.

#### Doelstellings van Diens

3. Die doelstellings van die Diens is—
  - (a) om publieke en nie-publieke rekords van blywende waarde, vir gebruik deur die publiek en die Staat in stand te hou;
  - (b) om dié rekords toeganklik te maak, en om die gebruik daarvan deur die publiek te bevorder;
  - (c) om die behoorlike bestuur en versorging van alle publieke rekords te verseker;
  - (d) om nie-publieke rekords van blywende waarde en provinsiale betekenis wat nie op ’n meer geskikte wyse deur ’n ander instelling in stand gehou kan word nie, te versamel, met behoorlike inagneming van die behoefte om aspekte van die Provinsie se ervaring wat in die verlede deur argief-bewaarplekke nagelaat is, te dokumenteer;
  - (e) om samewerking en koördinasie tussen instellings wat nie-publieke rekords van blywende waarde in bewaring het, te bevorder;
  - (f) om ’n bewustheid van argiewe en rekordbestuur te bevorder, en om argivale en rekordbestuursaktiwiteite aan te moedig; en
  - (g) om in die algemeen die behoud en gebruik van ’n provinsiale argivale erfenis te bevorder.

#### Aanstelling van Hoof van die Diens

4. Die Hoof van die Diens moet ingevolge die bepalings van die Staatsdienswet aangestel word en moet oor tersaaklike professionele ondervinding en ’n toepaslike argiefkwalifikasie beskik.

#### Bevoegdheid van Hoof van die Diens

5. (1) Die Hoof van die Diens is verantwoordelik vir die bestuur van die Diens.
- (2) Die Hoof van die Diens kan—
  - (a) enige maatreëls tref wat hy of sy nodig ag om rekords te orden, te beskryf en op te spoor;
  - (b) inligtings-, konsultasie-, navorsings- en ander dienste met betrekking tot rekords lewer;
  - (c) met besondere nadruk op aktiwiteite wat daarop gerig is om uit te reik na minderbevoorregte sektore van die samelewing, inligting met betrekking tot rekords bekend maak deur metodes soos publikasies en uitstallings en die uitleen van rekords;

- (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 Service;
- (e) provide training in archival techniques and the management of records;
- (f) cooperate with organisations interested in archival matters or the management of records;
- (g) provide professional and technical support in aid of archival activities and the archival community;
- (h) 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; and
- (i) with the concurrence of the Provincial Minister, exempt a governmental body from any provision of this Act.

(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
- (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.
- (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;
  - (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
    - (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.
- (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.
- (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.

- (d) oor die algemeen ander stappe doen en ander handelinge verrig wat nodig of bevorderlik is ten einde die doelstellings van die Diens te verwezenlik;
- (e) opleiding in argivale tegnieke en die bestuur van rekords verskaf;
- (f) saamwerk met organisasies wat belang stel in argivale aangeleenthede of die bestuur van rekords;
- (g) professionele en tegniese bystand verleen ter ondersteuning van argivale aktiwiteite en die argivale gemeenskap;
- (h) van 'n persoon wat rekords wat by die Diens in bewaring is, vir navorsing oor 'n publikasie of verhandeling gebruik het, verlang om 'n eksemplaar van die publikasie of verhandeling aan die Diens te verskaf; en
- (i) met die instemming van die Provinsiale Minister 'n regeringsliggaam vrystel van enige bepaling van hierdie Wet.

(3) Die Hoof van die Diens kan—

- (a) by die verrigting van sy of haar pligte bygestaan word deur beamptes en werknemers wat ingevolge die Staatsdienswet aangestel is; en
- (b) behoudens enige voorwaardes, 'n bevoegdheid of plig skriftelik delegeer of opdra aan 'n lid van die personeel en kan so 'n delegering of opdrag te eniger tyd skriftelik intrek.

#### Bewaring en instandhouding van rekords

6. (1) Die Provinsiale Minister kan van tyd tot tyd argiefbewaarplesse vir die bewaring van rekords onder beheer van die Hoof van die Diens instel.
- (2) Publieke rekords wat in 'n beskikkingsmagtiging geïdentifiseer is as sou dit blywende waarde hê, word na 'n argiefbewaarples oorgeplaas wanneer dit 20 jaar oud is, met dien verstande dat—
- (a) geen ander Wet van die Parlement of van die Provinsiale Parlement van die Wes-Kaap vereis dat dié rekords deur 'n bepaalde regeringsliggaam of persoon in bewaring gehou moet word nie;
  - (b) die Hoof van die Diens, na oorleg met die hoof van 'n regeringsliggaam, rekords kan identifiseer wat—
    - (i) deur 'n regeringsliggaam in bewaring gehou moet word; of
    - (ii) na 'n argiefbewaarples oorgeplaas moet word voordat dit 20 jaar oud is;
  - (c) die Hoof van die Diens die oorpasing van enige publieke rekords kan uitstel; en
  - (d) die Hoof van die Diens toestemming kan verleen dat enige publieke rekords na 'n argiefbewaarples oorgeplaas word voordat dit 20 jaar oud is.
- (3) Die Provinsiale Minister kan bedinge en voorwaardes voorskryf vir die oorpasing van rekords kragtens subartikel (2).
- (4) Die Hoof van die Diens moet die stappe doen wat nodig is vir die behoud en herstel van rekords.
- (5) Die Hoof van die Diens kan enige publieke rekord wat deur die Diens in bewaring gehou word, vernietig of andersins daaroor beskik waar die verdere behoud van die rekord volgens bestaande beskikkingsmagtigings deur die Hoof van die Diens uitgereik, nie meer nodig geag word nie.

**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.
- (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—
- (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) 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 granted by the Head of the Service upon request.
- (2) A non-public record in the custody of the Service must be available for public access subject to any conditions agreed upon at 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; and
- (4) The Provincial Minister 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 Service.

**Records management**

9. (1) Subject to the provisions of this Act, the Head of the Service is responsible for the proper records management of 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, issued subject to—
- (i) section 6(4); and
- (ii) a final ruling by the Provincial Minister when differences arising between the Head of the Service and the Committee cannot be resolved;
- (b) the Head of the Service must—
- (i) determine a records classification system or systems to be applied by governmental bodies;
- (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;

**Verkryging van nie-publieke rekords**

7. (1) Die Hoof van die Diens kan namens die Provinsiale Regering van die Wes-Kaap, na verkryging van goedkeuring van die hoof van die provinsiale departement, nie-publieke rekords wat na sy of haar mening van blywende waarde en provinsiale betekenis is en nie op 'n meer geskikte wyse deur 'n ander instelling bewaar kan word nie, deur middel van aankoop of skenking of bruikleen tydelik of permanent, hetsy onvoorwaardelik of op die voorwaardes waarop ooreengekom word, verkry.
- (2) Behoudens die voorwaardes wat van toepassing is, moet nie-publieke rekords wat kragtens subartikel (1) verkry is, geplaas word in die argiefbewaarplek wat die Hoof van die Diens bepaal.

**Toegang en gebruik**

8. (1) Behoudens enige ander Wet wat betrekking het op toegang tot publieke rekords—
- (a) is 'n publieke rekord wat by die Diens in bewaring is, beskikbaar vir openbare toegang indien 'n tydperk van 20 jaar vanaf die einde van die jaar waarin die rekord tot stand gekom het, verloop het;
- (b) kan die Hoof van die Diens op versoek toegang verleen tot 'n publieke rekord ten opsigte waarvan 'n tydperk korter as 20 jaar vanaf die einde van die jaar waarin die rekord tot stand gekom het, verloop het.
- (2) 'n Nie-publieke rekord wat by die Diens in bewaring is, is beskikbaar vir openbare toegang behoudens enige voorwaardes waarop ooreengekom is tydens die verkryging daarvan ingevolge artikel 7(1).
- (3) Ondanks subartikels (1) en (2) kan die Hoof van die Diens toegang tot 'n rekord weier op grond van die swak toestand daarvan, indien alternatiewe prosedures voorsiening maak vir toegang tot die inhoud van dié rekord.
- (4) Die Provinsiale Minister kan regulasies uitvaardig ten opsigte van die toelating van die publiek tot argiefbewaarplekke, die beskikbaarstelling van rekords vir openbare toegang, en die gebruik van toerusting vir die maak van afdrukke van of uittreksels uit rekords wat by die Diens in bewaring is.

**Rekordbestuur**

9. (1) Behoudens die bepalings van hierdie Wet is die Hoof van die Diens verantwoordelik vir die behoorlike bestuur van rekords wat by regeringsliggame, in bewaring is.
- (2) Sonder om die wye omvang van subartikel (1) in te kort—
- (a) mag geen publieke rekord onder die beheer van 'n regeringsliggaam na 'n argiefbewaarplek oorgeplaas, vernietig, uitgewis of op enige ander wyse oor beskik word sonder die skriftelike magtiging van die Hoof van die Diens, nie wat uitgereik word behoudens —
- (i) artikel 6(4); en
- (ii) 'n finale beslissing deur die Provinsiale Minister wanneer verskille wat tussen die Hoof van die Diens en die Komitee ontstaan, nie opgelos kan word nie;
- (b) moet die Hoof van die Diens—
- (i) 'n rekordklassifikasiesstelsel of -stelsels wat deur regeringsliggame toegepas moet word, bepaal;
- (ii) voorwaardes vir die mikroverfilming of elektroniese reproduksie van rekords bepaal; en
- (iii) voorwaardes vir die bestuur van elektroniese rekordstelsels bepaal;

- (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.
- (3) The Head of the Service must determine the records management policy of a governmental body, which may include —
- (a) determining the conditions subject to which records may be microfilmed or electronically reproduced;
- (b) determining the conditions subject to which electronic records systems should be managed; and
- (c) after consultation with the head of the provincial department, determining the appraisal policy of the Service.
- (4) The Head of the Service may—
- (a) 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, may be done only with the consent of the head of the governmental body concerned; and
- (b) after consultation with the head of the provincial department, 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.
- (5) The Provincial Minister may make regulations regarding the management and care of public records in the custody of governmental bodies.
- (6) (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.
- (c) The Head of the Service may assign additional powers and functions to a records manager.

#### Archives Advice Committee

- 10.** (1) The Provincial Minister, by notice in the *Provincial Gazette*, must establish an advice committee to be known as the Western Cape Archives Advice Committee.
- (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;
- (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—

- (c) moet die Hoof van die Diens publieke rekords inspekteer vir sover 'n inspeksie nodig is vir die verrigting van sy of haar werksaamhede kragtens hierdie Wet, met dien verstande dat die inspeksie van die publieke rekords wat inligting bevat waarvan die bekendmaking deur enige ander Wet van die Parlement beperk word, slegs met die toestemming van die hoof van die betrokke regeringsliggaam gedoen mag word.
- (3) Die Hoof van die Diens moet die rekordbestuursbeleid van 'n regeringsliggaam bepaal, wat die volgende kan insluit:
- (a) die bepaling van voorwaardes waarop rekords mikroverfilm of elektronies gereproduseer kan word;
- (b) die bepaling van voorwaardes waarop elektroniese rekordstelsels bestuur moet word; en
- (c) na oorleg met die hoof van die provinsiale departement, die bepaling van die Diens se keuringsbeleid.
- (4) Die Hoof van die Diens kan—
- (a) publieke rekords inspekteer vir sover die inspeksie nodig is vir die verrigting van sy of haar werksaamhede kragtens hierdie Wet; met dien verstande dat die inspeksie van publieke rekords wat inligting bevat waarvan die bekendmaking deur enige ander Wet van die Parlement beperk word, slegs met die toestemming van die hoof van die betrokke regeringsliggaam gedoen mag word; en
- (b) na oorleg met die hoof van die provinsiale departement, van tyd tot tyd voorskrifte en instruksies, wat nie strydig met die regulasies moet wees nie, uitreik met betrekking tot die bestuur en versorging van publieke rekords wat by regeringsliggame in bewaring is.
- (5) Die Provinsiale Minister kan regulasies uitvaardig met betrekking tot die bestuur en versorging van publieke rekords wat by regeringsliggame in bewaring is.
- (6) (a) Die hoof van 'n regeringsliggaam moet, behoudens enige wet wat die indiensstelling van personeel van die betrokke regeringsliggaam reël en enige vereistes wat voorgeskryf word, 'n beampte van die liggaam as rekordbestuurder van die liggaam aanstel.
- (b) Die rekordbestuurder is daarvoor verantwoordelik om toe te sien dat die regeringsliggaam aan die vereistes van hierdie Wet voldoen.
- (c) Die Hoof van die Diens kan bykomende bevoegdhede en werksaamhede aan 'n rekordbestuurder opdra.

#### Argiefadvieskomitee

- 10.** (1) Die Provinsiale Minister moet by kennisgewing in die *Provinsiale Koerant* 'n advieskomitee instel wat as die Wes-Kaapse Argiefadvieskomitee bekend staan.
- (2) Die Komitee bestaan uit minstens vyf maar hoogstens nege lede wat deur die Provinsiale Minister aangestel word.
- (3) Lede van die Komitee moet—
- (a) Suid-Afrikaanse burgers wees;
- (b) permanent in die Provinsie Wes-Kaap woonagtig wees;
- (c) die inwoners van die Provinsie Wes-Kaap demografies verteenwoordig; en
- (d) kundig wees, of 'n belangstelling hê, in argief-aangeleenthede.

#### Aanstelling van lede van Komitee

- 11.** (1) Die Provinsiale Minister stel die lede van die Komitee vir 'n tydperk van hoogstens drie jaar aan. Die Komitee bestaan uit—

- (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.
- (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.

#### 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.
- (2) The Committee, at its first meeting, must from its members (other than the Head of the Service) select 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.
- (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.
- (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.
- (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 Provincial Archives and Records Service, only on grounds of misconduct, inability or incompetence.

#### Filling of vacancies

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

#### Objects and functions

15. The objects and functions of the Committee are—
- (a) to promote, complement and support the objects and functions of the Provincial Archives Service as mentioned in section 3 of this Act; and

- (a) die Hoof van die Diens;
  - (b) twee persone wat deur die Wes-Kaapse Tak van die Suid-Afrikaanse Vereniging van Argivarisse benoem is; en
  - (c) ander persone uit die lys kandidate wat deur middel van 'n openbare proses benoem is.
- (2) Die Provinsiale Minister moet by kennisgewing in die *Provinsiale Koerant* en die ander gedrukte media wat die Provinsiale Minister geskik ag, die breë publiek uitnooi om persone te benoem vir aanstelling as lede van die Komitee.
- (3) Indien die organisasie in subartikel (1)(b) bedoel, versuim om twee persone te benoem, kan die Provinsiale Minister twee persone namens daardie organisasie aanstel.
- (4) Enige lid van die Komitee kan by verstryking van sy of haar ampstermyn heraan gestel word as lid van die Komitee, uitgesonderd die Hoof van die Diens, wat die enigste permanente lid van die Komitee is.

#### Voorsitter en ondervoorsitter

12. (1) Die Provinsiale Minister moet 'n lid van die Komitee (uitgesonderd die Hoof van die Diens) as voorsitter aanwys en moet die datum en plek van die eerste vergadering van die Komitee bepaal.
- (2) Die Komitee moet op sy eerste vergadering uit sy lede (uitgesonderd die Hoof van die Diens) 'n ondervoorsitter kies.
- (3) Wanneer die voorsitter van die Komitee afwesig is of nie in staat is om sy of haar werksaamhede as voorsitter te verrig nie, moet die ondervoorsitter as voorsitter optree en moet hy of sy vir dié tydperk alle bevoegdhede en pligte van die voorsitter uitoefen en verrig.
- (4) Indien die voorsitter sy of haar amp ontruim, moet die Provinsiale Minister 'n ander lid as voorsitter in sy of haar plek aanstel.
- (5) Indien sowel die voorsitter as die ondervoorsitter afwesig is van 'n vergadering van die Komitee, moet die lede wat op die vergadering teenwoordig is, 'n lid wat verteenwoordig is (uitgesonderd die Hoof van die Diens) kies om vir daardie vergadering as voorsitter op te tree.
- (6) Die posisie van voorsitter raak vakant wanneer—
- (a) die ampstermyn van daardie lid verstryk;
  - (b) daardie lid bedank; of
  - (c) daardie lid ophou om 'n lid van die Komitee te wees.
- (7) 'n Lid mag nie as voorsitter herkies word nie.

#### Ontslag

13. Die Provinsiale Minister kan 'n lid van die Komitee, uitgesonderd die Hoof van die Provinsiale Argief- en Rekorddiens, ontslaan slegs op grond van wangedrag, onvermoë of onbekwaamheid.

#### Vulling van vakatures

14. Indien 'n vakature voor die verstryking van die normale termyn van 'n lid ontstaan, kan die Provinsiale Minister 'n persoon vir die onverstreke tydperk van daardie lid se termyn aanstel ooreenkomstig die bepalinge van artikel 11(2).

#### Doelstellings en werksaamhede

15. Die doelstellings en werksaamhede van die Komitee is—
- (a) om die doelstellings en werksaamhede van die Provinsiale Argiefdiens soos in artikel 3 vermeld, te bevorder, aan te vul en te steun; en

- (b) to advise the Provincial Minister on issues relating to archival matters.

#### Internal procedures and rules

16. (1) The Committee must determine its own internal performance and procedures by compiling rules in respect of —
- the calling of meetings;
  - the procedures at meetings;
  - the frequency of meetings; provided that at least two meetings must be called annually; and
  - 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.

#### 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 after consultation with the Provincial Minister responsible for finance in the Province of the Western Cape.
- (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.

#### 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 accountable for the consequences of any action taken in good faith and without negligence in terms of this Act.

#### Offences and penalties

19. (1) Any person who—
- wilfully damages any public or non-public record in the control of a governmental body; or
  - 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.

#### 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 (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.
- (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 matters becomes a member of staff of the provincial department employed in the Provincial Archival Service in the Western Cape, from the date of commencement of this Act.

- (b) om die Provinsiale Minister oor kwessies rakende argiefaangeleenthede te adviseer.

#### Interne prosedures en reëls

16. (1) Die Komitee moet sy eie interne handeling en prosedures bepaal deur reëls op te stel ten opsigte van—
- die belê van vergaderings;
  - die prosedures op vergaderings;
  - die frekwensie van vergaderings; met dien verstande dat minstens twee vergaderings jaarliks gehou moet word; en
  - die verkiesing van 'n ondervoorsitter.
- (2) 'n Kworum vir 'n vergadering is 'n meerderheid van al die aangestelde lede van die Komitee.
- (3) Die Komitee neem besluite deur 'n resoluë van die meerderheid van die lede teenwoordig op 'n vergadering, en in die geval van 'n staking van stemme het die persoon wat op die vergadering voorsit 'n beslissende stem benewens 'n beraadslagende stem.

#### Toelaes

17. (1) Enige lid van die Komitee wat nie in die voltydse diens van die Staat is nie, kan uit die fondse van die provinsiale departement dié vergaderingstoelaes betaal word wat deur die Provinsiale Minister bepaal word na oorleg met die Provinsiale Minister verantwoordelik vir finansies in die Provinsie Wes-Kaap.
- (2) 'n Lid in subartikel (1) bedoel, kan uit fondse van die provinsiale departement vergoed word ten opsigte van uitgawes deur hom of haar aangegaan by die verrigting van die werksaamhede van die Komitee, soos deur die Provinsiale Minister bepaal.

#### Beperking van aanspreeklikheid

18. Die Provinsiale Administrasie: Wes-Kaap en enige provinsiale departement of enige persoon wat in diens is van een van die twee is nie aanspreeklik vir die gevolge van enige handeling wat te goeder trou en sonder nalatigheid ingevolge hierdie Wet verrig is nie.

#### Misdrywe en strawwe

19. (1) Enige persoon wat—
- enige publieke of nie-publieke rekord onder die beheer van 'n regeringsliggaam opsetlik beskadig; of
  - anders as ooreenkomstig hierdie Wet of enige ander wet so 'n rekord verwyder, vernietig of uitwis,
- begaan 'n misdryf en is by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000 of gevangenisstraf vir 'n tydperk van hoogstens twee jaar of dié boete sowel as die gevangenisstraf.

#### Oorgangsreëlings

20. (1) Die persoon wat onmiddellik voor die inwerkingtreding van hierdie Wet die werksaamhede van die waarnemende hoof van die Wes-Kaapse Provinsiale Argief-komponent van die Nasionale Argief van Suid-Afrika verrig het ingevolge die Wet op die Nasionale Argief van Suid-Afrika, 1996 (Wet 43 van 1996), gaan voort in die amp as waarnemende hoof van die Diens totdat die Hoof van die Diens ingevolge artikel 4 aangestel word.
- (2) Elke staatsampenaar wat onmiddellik voor die inwerkingtreding van hierdie Wet as 'n lid van die personeel van die Nasionale Departement van Kuns en Kultuur werksaamhede in die Provinsie Wes-Kaap met betrekking tot argiefaangeleenthede verrig het, word 'n lid van die personeel van die provinsiale departement in diens van die Provinsiale Argiefdiens in die Wes-Kaap met ingang van die datum van inwerkingtreding van hierdie Wet.

- (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.

#### **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.

#### **Short title and commencement**

22. This Act is the Provincial Archives and Records Service of the Western Cape Act, 2004, and comes into operation on a date to be fixed by the Premier by proclamation in the *Provincial Gazette*.

- (3) Enige rekord wat by die waarnemende hoof in bewaring is op die dag onmiddellik voor die inwerkingtreding van hierdie Wet word hierby na die Hoof van die Diens oorgeplaas, behoudens die bedinge en voorwaardes wat op daardie dag op dié rekords van toepassing was.

#### **Regulasies**

21. Die Provinsiale Minister kan regulasies uitvaardig aangaande enige aangeleentheid wat ingevolge hierdie Wet by regulasie voorgeskryf of gedoen moet of kan word, en in die algemeen, met betrekking tot enige aangeleentheid ten opsigte waarvan dit nodig of dienstig is om regulasies uit te vaardig ten einde die doelstellings van hierdie Wet te bereik of te bevorder.

#### **Kort titel en inwerkingtreding**

22. Hierdie Wet heet die Wet op die Provinsiale Argief- en Rekorddiens van die Wes-Kaap, 2004, en tree in werking op 'n datum wat die Premier by proklamasie in die *Provinsiale Koerant* bepaal.

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