

Version  
as at 1 September 2022



## Public Records Act 2005

Public Act 2005 No 40  
Date of assent 20 April 2005  
Commencement see section 2

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Department of Internal Affairs.**

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**1 Title**

This Act is the Public Records Act 2005.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1****Purpose, other preliminary provisions, and key administrative provisions**

## Subpart 1—Purpose and other preliminary provisions

**3 Purposes of Act**

The purposes of this Act are—

- (a) to provide for the continuation of the repository of public archives called the National Archives with the name Archives New Zealand (Te Rua Mahara o te Kāwanatanga); and
- (b) to provide for the role of the Chief Archivist in developing and supporting government recordkeeping, including making independent determinations on the disposal of public records and certain local authority archives; and
- (c) to enable the Government to be held accountable by—
  - (i) ensuring that full and accurate records of the affairs of central and local government are created and maintained; and
  - (ii) providing for the preservation of, and public access to, records of long-term value; and
- (d) to enhance public confidence in the integrity of public records and local authority records; and
- (e) to provide an appropriate framework within which public offices and local authorities create and maintain public records and local authority records, as the case may be; and
- (f) through the systematic creation and preservation of public archives and local authority archives, to enhance the accessibility of records that are relevant to the historical and cultural heritage of New Zealand and to New Zealanders' sense of their national identity; and
- (g) to encourage the spirit of partnership and goodwill envisaged by the Treaty of Waitangi (Te Tiriti o Waitangi), as provided for by section 7; and
- (h) to support the safekeeping of private records.

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**academic staff** means members of the staff of a tertiary education institution who engage in teaching students or undertaking research or both

**administrative head** means, in relation to—

- (a) a public office that is not a public office to which paragraph (b) applies, the person responsible for the performance of that office, for example, a chief executive within the meaning of section 2(1) of the Public Finance Act 1989;
- (b) a public office that involves carrying out a statutory function, the holder of that office, for example, the Registrar-General of Land;
- (c) a local authority, the person responsible for the performance of the local authority, for example, the chief executive appointed under section 42 of the Local Government Act 2002 or the chief executive of an organisation

referred to in paragraph (b) of the definition of the term local authority in section 4

**approved repository** means a repository approved by the Minister under section 26

**Archives Council** and **Council** mean the Archives Council established by section 14

**Archives New Zealand** means the repository referred to in section 9

**Chief Archivist** means the Chief Archivist referred to in section 10

**chief executive** means the chief executive of the department

**controlling local authority**, in relation to a local authority record,—

- (a) means the local authority that controls the local authority record; and
- (b) includes any successor to that local authority

**controlling public office**—

- (a) means,—
  - (i) in relation to a public record, the public office that controls the public record;
  - (ii) in relation to a public archive, the public office that has power to determine conditions of access to the public archive; and
- (b) includes any successor to that public office

**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**discharge register** means the register referred to in section 19(1)(b)

**discharged record** means a record the status of which as a public record is cancelled in accordance with section 25

**disposal**, in relation to a public record or local authority record, means—

- (a) the transfer of control of a record; or
- (b) the sale, alteration, destruction, or discharge of a record

**electronic** includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic

**estrays record**—

- (a) means a public record, public archive, or protected record that has been disposed of otherwise than—
  - (i) in accordance with an authorisation of the Chief Archivist under this Act; or
  - (ii) as required by or under another enactment; but
- (b) does not include a discharged public record

**local authority—**

- (a) has the same meaning as in section 5(1) of the Local Government Act 2002; and
- (b) includes the following organisations defined in section 5(1) of that Act:
  - (i) a council-controlled organisation:
  - (ii) a council-controlled trading organisation:
  - (iii) a local government organisation

**local authority archive—**

- (a) means a local authority record that—
  - (i) is no longer in current use by the controlling local authority; or
  - (ii) has been in existence for 25 years or more (whether or not in current use); and
- (b) includes—
  - (i) a protected record; and
  - (ii) a local authority record that the controlling local authority resolves is worth permanent preservation

**local authority record** means a record or class of records in any form, in whole or in part, created or received (whether before or after the commencement of this Act) by a local authority in the conduct of its affairs

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**Minister's papers** means records created or received (whether before or after the commencement of this Act) by a Minister while holding office as a Minister of the Crown

**open access record** means—

- (a) a public record—
  - (i) that has been in existence for at least 25 years or has been transferred to the control of the Chief Archivist; and
  - (ii) that is classified as an open access record under section 44(2); and
  - (iii) to which public access has not been prohibited under section 49:
- (b) a local authority archive—
  - (i) that is classified as an open access record under section 46(2); and
  - (ii) to which public access has not been prohibited under section 49

**parliamentary record** means a record presented to, or belonging to, the House of Representatives or any of its committees

**prescribed record** means a record declared under section 38 to be a prescribed record for the purposes of this Act

**private record** means a record that is not created in, or received by, a public office or local authority, and that is not a Minister's paper

**protected record** means a local authority record declared under section 40 to be a protected record for the purposes of this Act

**public access register** means the register referred to in section 19(1)(d)

**public archive** means a public record that is under the control of the Chief Archivist

**public office**—

- (a) means the legislative, executive, and judicial branches of the Government of New Zealand; and
- (b) means the agencies or instruments of those branches of government; and
- (c) includes (without limiting the agencies or instruments)—
  - (i) departments as defined in section 5 of the Public Service Act 2020 including a departmental agency (as defined in that section) hosted by a department and an interdepartmental executive board (as defined in that section) serviced by a department; and
  - (ia) interdepartmental ventures as defined in section 5 of the Public Service Act 2020; and
  - (ii) Offices of Parliament as defined in section 2(1) of the Public Finance Act 1989; and
  - (iii) State enterprises as defined in section 2 of the State-Owned Enterprises Act 1986; and
  - (iv) Crown entities as defined in section 7(1) of the Crown Entities Act 2004; and
  - (v) the Parliamentary Counsel Office; and
  - (vi) the Parliamentary Service; and
  - (vii) the Office of the Clerk of the House of Representatives; and
  - (viii) the New Zealand Police; and
  - (ix) the New Zealand Defence Force; and
  - (x) *[Repealed]*
  - (xa) the Approved Agency under the Harmful Digital Communications Act 2015, in its role under that Act; and
  - (xi) any person or class of persons declared by an Order in Council made under section 5(1)(a)(i) to be a public office for the purposes of this Act



**public record**—

- (a) means a record or a class of records, in any form, in whole or in part, created or received (whether before or after the commencement of this Act) by a public office in the conduct of its affairs; and
- (b) includes—
  - (i) a record or a class of records declared under section 5(1)(a)(ii) to be a public record for the purposes of this Act; and
  - (ii) stray records; but
- (c) does not include—
  - (i) a special collection; or
  - (ii) records created by the academic staff or students of a tertiary education institution, unless the records have become part of the records of that institution

**record** means information, whether in its original form or otherwise, including (without limitation) a document, a signature, a seal, text, images, sound, speech, or data compiled, recorded, or stored, as the case may be,—

- (a) in written form on any material; or
- (b) on film, negative, tape, or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer, or other electronic device or process

**responsible Minister** means—

- (a) the Minister of the Crown for the time being responsible for the administration of a controlling public office; or
- (b) in the case of a controlling local authority, the Minister of the Crown for the time being responsible for the administration of the Local Government Act 2002

**restricted access record** means a record to which access has been restricted in accordance with section 44(3)

**special collection**—

- (a) means records collected by a public office for purposes such as research or the preservation of records; but
- (b) does not include public records

**standards** means the standards issued by the Chief Archivist under section 27

**Statistician** has the meaning given to it in section 6 of the Data and Statistics Act 2022

**student** means a person enrolled at a tertiary education institution

**tertiary education institution** has the same meaning as in section 7(1)(e) of the Crown Entities Act 2004

**tikanga Māori** means Māori customary values and practices.

Section 4 **Archives New Zealand**: substituted, on 1 February 2011, by section 4(1) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 4 **chief executive**: inserted, on 1 February 2011, by section 4(3) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 4 **department**: inserted, on 1 February 2011, by section 4(3) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 4 **Minister**: substituted, on 1 February 2011, by section 4(2) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 4 **public office** paragraph (c)(i): replaced, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 4 **public office** paragraph (c)(ia): inserted, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 4 **public office** paragraph (c)(x): repealed, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 4 **public office** paragraph (c)(xa): inserted, on 21 November 2016, by section 28 of the Harmful Digital Communications Act 2015 (2015 No 63).

Section 4 **Statistician**: amended, on 1 September 2022, by section 107(1) of the Data and Statistics Act 2022 (2022 No 39).

## 5 Variations to application of Act

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
  - (a) declare that—
    - (i) a person or body owned or controlled, directly or indirectly, by the Crown, or 1 or more classes of such a person or body, is a public office for the purposes of this Act:
    - (ii) a record or class of records is a public record for the purposes of this Act:
  - (b) vary the requirement for compliance with the matters referred to in subsection (2) in relation to 1 or more—
    - (i) public offices, other than those referred to in subsection (3):
    - (ii) public records:
    - (iii) local authority records.
- (2) Subsection (1) permits compliance to be varied under this section in respect of—
  - (a) any provision of this Act, except section 17 (which requires public records and local authority records to be created and maintained) and section 18 (which prohibits the unauthorised disposal of public records and protected records):
  - (b) any regulations made under this Act:

- (c) any standards.
- (3) Subsection (1)(b)(i) does not apply to the public offices referred to in paragraph (c)(i) and (v) to (x) of the definition of public office in section 4.
- (4) The Governor-General may, by Order in Council made on the recommendation of the Minister, amend or revoke an Order in Council made under subsection (1).
- (5) Before making a recommendation under subsection (1) or subsection (4), the Minister must—
- (a) consult,—
- (i) in the case of a recommendation made under subsection (1)(a)(i) or subsection (4), with the Minister of the Crown for the time being having responsibility for the person or body or class of person or body that is to be the subject of the recommendation; and
- (ii) in the case of a recommendation made under subsection (1)(a)(ii) or subsection (4), with the person or class of persons who have possession of the record or class of records; and
- (iii) in the case of a recommendation made under subsection (1)(b)(i) or (ii) or subsection (4), with the responsible Minister of the controlling public office affected; and
- (b) in each case, have regard to advice received from the Archives Council.
- (6) Before making a recommendation in relation to local authority records under subsection (1)(b)(iii) or subsection (4), the Minister must—
- (a) consult with the Minister of the Crown for the time being responsible for the administration of the Local Government Act 2002; and
- (b) have regard to advice received from the Archives Council.
- (7) This Act continues to apply to a mixed ownership model company (within the meaning of section 45P of the Public Finance Act 1989) that was a public office immediately before becoming a mixed ownership model company, as if it were still a public office, but only in respect of its affairs before it ceased to be a public office (regardless of when the records of those affairs are created).
- (8) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 5(7): inserted, on 30 June 2012, by section 11 of the Public Finance (Mixed Ownership Model) Amendment Act 2012 (2012 No 45).

Section 5(8): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## **6 Exclusions from application of Act**

This Act does not apply to—

- (a) ballot papers or voting papers (or any associated electoral materials) sent to the Clerk of the House of Representatives under—
  - (i) section 187 of the Electoral Act 1993; or
  - (ii) section 50 of the Referenda (Postal Voting) Act 2000:
- (b) voting documents and specified materials received by Registrars of the District Court under section 89(2) of the Local Electoral Act 2001.

Section 6(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

## **7 Treaty of Waitangi (Te Tiriti o Waitangi)**

In order to recognise and respect the Crown's responsibility to take appropriate account of the Treaty of Waitangi (Te Tiriti o Waitangi),—

- (a) section 11 (which relates to the functions and duties of the Chief Archivist) requires the Chief Archivist to ensure that, for the purposes of performing the Chief Archivist's functions, processes are in place for consulting with Māori; and
- (b) section 14 (which relates to the establishment of the Archives Council) requires at least 2 members of the Archives Council to have a knowledge of tikanga Māori; and
- (c) section 15 (which relates to the functions of the Archives Council) specifically recognises that the Archives Council may provide advice concerning recordkeeping and archive matters in which tikanga Māori is relevant; and
- (d) section 26 (which relates to the approval of repositories) recognises that an iwi-based or hapu-based repository may be approved as a repository where public archives may be deposited for safekeeping.

## **8 Act binds the Crown**

This Act binds the Crown.

## Subpart 2—Key administrative provisions

### *Archives New Zealand (Te Rua Mahara o te Kāwanatanga)*

#### **9 Continuation of Archives New Zealand**

- (1) The repository called the National Archives that was established by section 5 of the Archives Act 1957 is continued with the name Archives New Zealand (Te Rua Mahara o te Kāwanatanga).
- (2) *[Repealed]*

Section 9(2): repealed, on 1 February 2011, by section 5 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### *Chief Archivist*

#### **10 Chief Archivist**

- (1) There is an office of the Chief Archivist.
- (2) The Chief Archivist is the person for the time being appointed to that office by the chief executive under the Public Service Act 2020.
- (3) *[Repealed]*

Section 10(2): substituted, on 1 February 2011, by section 6 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 10(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 10(3): repealed, on 1 February 2011, by section 6 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

#### **11 Functions and duties of Chief Archivist**

- (1) The functions of the Chief Archivist, in achieving the purposes of this Act, are—
  - (a) to exercise a leadership role in recordkeeping in public offices and in the management of public archives in New Zealand; and
  - (b) in relation to public records,—
    - (i) to authorise the disposal of public records; and
    - (ii) to issue standards in accordance with section 27; and
    - (iii) to review, amend, or revoke those standards; and
    - (iv) to issue instructions in accordance with this Act; and
    - (v) to provide advice, or to issue guidelines, on the procedures or best practice for the creation, maintenance, or efficient management of public records and to review, amend, or revoke the advice or guidelines; and
    - (vi) to monitor and report on the compliance of public offices with this Act; and

- (vii) to provide protocols and processes for deferring the transfer of public records under section 22; and
    - (viii) to issue criteria for the independent auditing of public offices under section 33 and to review, amend, or revoke the criteria; and
  - (c) in relation to public archives,—
    - (i) to control and administer public archives; and
    - (ii) to ensure the preservation of public archives; and
    - (iii) to facilitate public access to, and promote the use of, public archives; and
  - (d) in relation to local authority records,—
    - (i) to protect certain local authority records for the purposes of this Act and to control the disposal of those records; and
    - (ii) to issue standards relating to the creation, maintenance, control, management, or appraisal for disposal of, or access to, local authority records, and to review, amend, or revoke those standards; and
    - (iii) to provide advice, or to issue guidelines, on the procedures or best practice for the creation, maintenance, or management of local authority records, and to review, amend, or revoke the advice or guidelines; and
    - (iv) to monitor, and if necessary report on, the compliance of local authorities with this Act; and
  - (e) to provide advice to Ministers or other persons concerning the creation or maintenance of Ministers' papers or private records; and
  - (f) to keep registers in accordance with the requirements of this Act; and
  - (g) to exercise a leadership role in facilitating and co-ordinating archival activities in New Zealand; and
  - (h) to perform any other functions or duties prescribed by or under this Act.
- (2) In addition, the Chief Archivist may provide services relating to public records or local authority records (including, without limitation, storage services, or training services on the management of public records or local authority records) for a fee as agreed by the Chief Archivist and the relevant administrative head of the public office or local authority.
- (3) For the purposes of performing any of the Chief Archivist's functions referred to in subsection (1), the Chief Archivist must ensure that processes are in place for consulting with Māori.

## **12 Chief Archivist to act independently**

In relation to the performance of his or her functions and duties and to the exercise of his or her powers under sections 11(1)(b) and (d), 20(1), and 30, the Chief Archivist—

- (a) must act independently in exercising his or her professional judgement; and
- (b) is not subject to direction from either the Minister or the chief executive.

Section 12: substituted, on 1 February 2011, by section 7 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

## **13 Delegations by Chief Archivist**

- (1) The Chief Archivist may, either generally or particularly, delegate to an employee in the department all or any of the Chief Archivist's functions, duties, or powers under this Act except—
  - (a) the power to authorise the disposal of—
    - (i) public records; or
    - (ii) protected records; and
  - (b) the power to delegate.
- (2) A delegation—
  - (a) must be in writing; and
  - (b) may be made subject to any restrictions and conditions the Chief Archivist thinks fit; and
  - (c) is revocable at any time, in writing; and
  - (d) does not prevent the performance or exercise of a function, duty, or power by the Chief Archivist.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

Section 13(1): amended, on 1 February 2011, by section 8 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### *Archives Council*

## **14 Archives Council established**

- (1) There is an unincorporated body called the Archives Council.
- (2) The Archives Council must consist of not more than 7 members appointed by the Minister by notice in the *Gazette*.

- (3) The Minister must, after consultation with the Minister of Māori Affairs and the Chief Archivist, appoint to the Archives Council persons who, in the opinion of the Minister,—
  - (a) have special knowledge and qualifications that are relevant to the functions of the Archives Council; and
  - (b) in the case of at least 2 persons, also have a knowledge of tikanga Māori.
- (4) A Council member—
  - (a) holds office for a term not exceeding 3 years, as specified by the Minister in the notice of appointment; and
  - (b) may be reappointed; and
  - (c) continues in office (unless the member resigns or is removed from office), despite the expiry of his or her term of office, until—
    - (i) the member is reappointed; or
    - (ii) the member's successor is appointed; or
    - (iii) the date specified in writing by the Minister for the end of the member's term of office.
- (5) The Minister may, at any time and for any reason that, in the Minister's opinion, justifies the removal, remove a Council member from office by written notice to the member.

## 15 Function of Archives Council

- (1) The function of the Archives Council is to provide to the Minister, on the request of the Minister or on its own initiative,—
  - (a) advice concerning recordkeeping and archive matters including (without limitation)—
    - (i) recordkeeping and archive matters in which tikanga Māori is relevant;
    - (ii) the Orders in Council that may be made under section 5:
    - (iii) authorisations to dispose of public records under section 20(3):
    - (iv) the approval of repositories under section 26:
    - (v) appropriate criteria for the independent audit of the recordkeeping practices of the Chief Archivist conducted under section 34:
  - (b) recommendations under section 55 on appeals to the Minister.
- (2) For the purpose of performing its functions under this Act, the Council has full powers, rights, and privileges.
- (3) The Council must report to the Minister each year on the performance of its functions during the preceding year.
- (4) The Minister must, as soon as practicable after receiving a report under subsection (3), present the report to the House of Representatives.



Section 15(1)(a)(v): amended, on 1 February 2011, by section 9 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

## **16 Administrative matters**

- (1) The Archives Council may regulate its own procedure.
- (2) The department must provide administrative services for the Council.
- (3) The members of the Council are entitled to be paid, out of money appropriated by Parliament for the purpose,—
  - (a) fees determined by the Minister in accordance with government policy; and
  - (b) reimbursing allowances or actual and reasonable expenses incurred in undertaking the functions of the Council.

Section 16(2): amended, on 1 February 2011, by section 10 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

## **Part 2 Recordkeeping requirements**

### **Subpart 1—Key duties**

## **17 Requirement to create and maintain records**

- (1) Every public office and local authority must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor.
- (2) Every public office must maintain in an accessible form, so as to be able to be used for subsequent reference, all public records that are in its control, until their disposal is authorised by or under this Act or required by or under another Act.
- (3) Every local authority must maintain in an accessible form, so as to be able to be used for subsequent reference, all protected records that are in its control, until their disposal is authorised by or under this Act.

## **18 Authority required to dispose of public records and protected records**

- (1) No person may dispose of, or authorise the disposal of, public records or protected records except with the authority of the Chief Archivist, given in accordance with the provisions of this Act.
- (2) Subsection (1) does not apply if the disposal of a public record or a protected record is required by or under another Act.

## Subpart 2—Control of public records

### *Registers*

#### **19 Registers**

- (1) The Chief Archivist must keep the following registers:
  - (a) a register of all transfers deferred under section 22; and
  - (b) a register of public records discharged under section 25; and
  - (c) a register of all records prescribed under section 38; and
  - (d) a public access register that contains information on—
    - (i) restrictions on public access to public records imposed under section 44(3); and
    - (ii) prohibitions imposed under section 49 on public access to public archives or protected records in the control of the Chief Archivist; and
    - (iii) the grounds for the prohibitions and restrictions recorded under this paragraph; and
    - (iv) the conditions agreed to under section 40(4)(a) as to public access for protected records transferred to the control of the Chief Archivist.
- (2) The Chief Archivist must make the registers available for public inspection.

Section 19(2): amended, on 1 February 2011, by section 11 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### *Disposal*

#### **20 Authority to dispose of public records**

- (1) The Chief Archivist may authorise in writing, in accordance with the purposes of this Act, the disposal of a public record (other than those referred to in subsection (3)) by—
  - (a) transferring control of the public record to another public office; or
  - (b) transferring control of the public record to the Chief Archivist; or
  - (c) altering or destroying the public record; or
  - (d) selling the public record; or
  - (e) discharging the public record.
- (2) Before authorising a disposal under subsection (1), the Chief Archivist must give not less than 30 days' notice, in the manner the Chief Archivist considers appropriate, of—
  - (a) the intention to dispose of the public record, with a general description of the public record concerned; and

- (b) the place where additional information may be obtained on the public record concerned and the person to whom any comments may be sent.
- (3) The Chief Archivist must not, without the Minister's written authorisation, dispose of a public record created or received by the Chief Archivist in relation to his or her functions, duties, and powers under this Act (except if section 21 or section 23 applies).
- (4) The Minister may, on the advice of the Archives Council given on the recommendation of the Chief Archivist, authorise in writing the disposal of a public record referred to in subsection (3).

Section 20(3): amended, on 1 February 2011, by section 12(1) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 20(4): amended, on 1 February 2011, by section 12(2) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### *Transfer*

#### **21 Mandatory transfer of public records**

- (1) Every public office must transfer from its possession and control public records that have been in existence for 25 years—
  - (a) to the possession of Archives New Zealand and the control of the Chief Archivist; or
  - (b) to the possession of an approved repository and the control of the Chief Archivist.
- (2) Subsection (1) applies unless—
  - (a) the public records are to be destroyed in accordance with the provisions of this Act or are required to be destroyed by or under another Act; or
  - (b) the administrative head of the controlling public office and the Chief Archivist agree in writing that the public records may be transferred, before the expiry of the 25-year period, to—
    - (i) the possession of Archives New Zealand and the control of the Chief Archivist; or
    - (ii) the possession of an approved repository and the control of the Chief Archivist; or
  - (c) the transfer of the public records is to be deferred under section 22.

### *Deferral of transfer*

#### **22 Deferred transfer of public records**

- (1) The requirement to transfer public records under section 21(1) does not apply—
  - (a) *[Repealed]*

- (b) if the administrative head of the controlling public office and the Chief Archivist have agreed in writing that the transfer of the public records may be deferred for a specified period on any conditions that the administrative head and the Chief Archivist consider appropriate; or
  - (c) to public records that are in electronic form, if the Chief Archivist instructs the controlling public office in writing to continue to maintain and control those records after the expiry of the 25-year period; or
  - (d) if a responsible Minister, after consultation with the Minister, certifies that—
    - (i) 1 or more of the circumstances referred to in subsection (6) applies in respect of a public record; and
    - (ii) the transfer of the public record may be deferred for a specified period.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) An agreement entered into under subsection (1)(b) may be renewed for further specified periods by agreement between the administrative head of the controlling public office and the Chief Archivist.
- (5) An instruction issued under subsection (1)(c)—
- (a) must identify the public records to which the instruction relates; and
  - (b) must direct the department to make payments to the controlling public office for the maintenance, preservation, and public use of any such public records at a rate agreed by the Chief Archivist and the controlling public office; and
  - (c) may contain conditions relating to the preservation and use of the public records concerned; and
  - (d) may specify a date for the transfer of the records to the control of the Chief Archivist.
- (6) Subsection (1)(d) applies only if a public record contains information the release of which would be likely to—
- (a) prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
  - (b) prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
    - (i) the government of another country or an agency of such a government; or
    - (ii) an international organisation; or
  - (c) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or

- (d) endanger the safety of any person.
- (7) A deferral permitted under subsection (1)(d) may be renewed by the responsible Minister, after consultation with the Minister.
- (8) Every transfer deferred under this section must be noted in the register of deferred transfers, in accordance with section 19(1)(a).

Section 22(1)(a): repealed, on 1 September 2022, by section 107(1) of the Data and Statistics Act 2022 (2022 No 39).

Section 22(2): repealed, on 1 September 2022, by section 107(1) of the Data and Statistics Act 2022 (2022 No 39).

Section 22(3): repealed, on 1 September 2022, by section 107(1) of the Data and Statistics Act 2022 (2022 No 39).

Section 22(5)(b): amended, on 1 February 2011, by section 13 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### **23 Transfer of public records**

- (1) If a controlling public office ceases to exist as a public office, or ceases to exercise a function to which its public records relate, its public records may be transferred to—
  - (a) the public office that has taken over the responsibilities of the controlling public office for those public records; or
  - (b) if paragraph (a) does not apply, the public office designated by the Chief Archivist as the public office responsible for those public records.
- (2) A public office that takes over responsibilities under subsection (1)(a) must give notice to the Chief Archivist of the transfer of the public records not later than 3 months after the transfer has taken place.
- (3) Subsection (1) applies, with the necessary modifications, to local authority records.

### **24 Temporary return of public archives to controlling public office**

If the administrative head of a controlling public office satisfies the Chief Archivist that the public archive is required for administrative use, the Chief Archivist—

- (a) must return the public archive to the possession of that public office for an agreed period of time; and
- (b) may impose conditions to ensure the safe custody and preservation of the public archive during the time that it is in the possession of the public office.

### *Discharge*

### **25 Discharge of public records**

- (1) The Chief Archivist may authorise in writing the discharge of a public record only if—

- (a) the Chief Archivist considers that the public record is suitable to be discharged; and
  - (b) the public record is an open access record that is not in current use; and
  - (c) the release of the public record is consistent with the principles of the Privacy Act 2020; and
  - (d) the public record is not subject to a request under the Official Information Act 1982; and
  - (e) the administrative head of the controlling public office agrees to the public record being discharged; and
  - (f) the person to whom the public record is to be discharged is not a Minister of the Crown, the Chief Archivist, an employee in the department, the Archives Council, a member of the Archives Council, or an employee of the controlling public office.
- (2) The Chief Archivist may authorise in writing the discharge of a class of public records that contains information about identified persons only if—
- (a) the Chief Archivist considers that the class of public records is suitable to be discharged; and
  - (b) the administrative head of the controlling public office agrees to the class of public records being discharged; and
  - (c) the Chief Archivist and the administrative head have entered into an agreement for the discharge of the class of public records on a record by record basis; and
  - (d) there are appropriate procedures to ensure that a record is discharged only to the person who is the subject of the information, or to the duly authorised agent of that person; and
  - (e) the discharge of the class of records is consistent with the principles of the Privacy Act 2020.
- (3) A public record that is discharged—
- (a) becomes the property of the person to whom it is discharged; and
  - (b) ceases to have status as a public record or to be subject to this Act.
- (4) A public record discharged under this section must be noted in the discharge register, in accordance with section 19(1)(b).

Section 25(1)(c): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 25(1)(f): amended, on 1 February 2011, by section 14 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 25(2)(e): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

*Approved repositories*

**26 Approval of repositories**

- (1) The Minister may, on the advice of the Archives Council, given on the recommendation of the Chief Archivist,—
  - (a) approve a relevant body (such as a museum, a library, another archive, or an iwi-based or hapu-based repository) as an approved repository where public archives may be deposited for safekeeping:
  - (b) amend or revoke that approval.
- (2) The Chief Archivist may,—
  - (a) at any time after giving reasonable notice, inspect an approved repository:
  - (b) with the agreement of the administrative head of the controlling public office and the consent of the approved repository, deposit public archives in an approved repository:
  - (c) impose standards or conditions on, or issue instructions to, an approved repository for the purpose of ensuring that—
    - (i) the Crown's interests in the public archives are preserved:
    - (ii) the public archives are properly maintained:
    - (iii) appropriate public access to the public archives is maintained:
  - (d) direct an approved repository to transfer public archives to the possession of Archives New Zealand, another approved repository, or the controlling public office.

Subpart 3—Standards, inspection, reporting, and audit

**27 Standards**

- (1) The Chief Archivist—
  - (a) may issue standards in relation to public records or local authority records for—
    - (i) their creation, maintenance, or management:
    - (ii) their appraisal for disposal:
    - (iii) the provision of access to them; and
  - (b) may review, amend, or revoke any standards referred to in paragraph (a); and
  - (c) must state, in relation to each standard,—
    - (i) the public office, class of public office, approved repository, or local authority to which the standard applies; and
    - (ii) whether compliance is mandatory or discretionary.

- (2) Before issuing a mandatory standard, the Chief Archivist must make a copy of the draft standard available to, and have a process in place for consulting with, every public office, approved repository, local authority, or other person to which the Chief Archivist considers that the proposed standard will apply, and to any other interested person.
- (3) The Chief Archivist must ensure that every standard issued under this section that is not secondary legislation is published in a manner that the Chief Archivist considers appropriate.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
- (a) mandatory standards under this section, unless they apply only to 1 or more named persons:
  - (b) an amendment to, or a revocation of, mandatory standards that are secondary legislation.

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	It must be published in a manner that the Chief Archivist considers appropriate	LA19 ss 73, 74(1)(a), Sch 1 cl 14
<b>Presentation</b>	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 27(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 27(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

## 28 Application and content of standards

Standards issued by the Chief Archivist may include (without limitation) all or any of the following matters:

- (a) the particular public record or particular local authority record to which they apply:
- (b) the procedures or practices that must be followed, or outcomes that must be achieved, in relation to the creation, maintenance, or management of public records or local authority records:
- (c) a standard against which the quality of recordkeeping practice may be judged:
- (d) the minimum standard of recordkeeping practice that will be allowed.

## 29 Inspection powers

- (1) The Chief Archivist may, after giving reasonable notice to a public office or local authority, inspect the public records or local authority records and local



authority archives, as the case may be, that are in the possession or under the control of that public office or local authority.

- (2) Subsection (1)—
- (a) permits the Chief Archivist to view the system of a public office or local authority for maintaining its public records or local authority records and local authority archives, as the case may be, and the conditions for their storage; but
  - (b) does not permit the Chief Archivist to inspect public records or local authority records and local authority archives that carry security classifications or are restricted by other legislation without the consent of the administrative head of the controlling public office or controlling local authority, as the case may be.
- (3) In this section, **security classifications** means the classifications assigned in accordance with the Security in Government Sector manual issued from time to time by the Government.

### **30 Exemptions**

- (1) The Chief Archivist may, on such terms and conditions (if any) that the Chief Archivist thinks appropriate, exempt a public office or a local authority that has requested the exemption from compliance with a standard or instruction issued by the Chief Archivist.
- (2) The administrative head of the public office or local authority in respect of which a decision is taken under subsection (1) may appeal against the decision under section 51.

### **31 Direction to report to Chief Archivist**

The Chief Archivist may give notice in writing directing the administrative head of a public office or of an approved repository to report to the Chief Archivist or to any other person specified by the Chief Archivist on—

- (a) any specified aspect of its recordkeeping practice;
- (b) the public records that it controls or (in the case of an approved repository) has possession of.

### **32 Annual report on recordkeeping**

- (1) The Chief Archivist must make an annual report to the Minister on the state of recordkeeping within public offices.
- (2) *[Repealed]*
- (3) The Minister must present the report of the Chief Archivist to the House of Representatives.

Section 32(2): repealed, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

**33 Independent audits of public offices**

- (1) As soon as is reasonably practicable after the date that is 5 years from the commencement of this Act, an independent audit of recordkeeping practices must be carried out in every public office.
- (2) The Chief Archivist must commission and meet the costs of each audit, which must—
  - (a) cover the aspects of recordkeeping practices specified for the purpose of the audit by the Chief Archivist; and
  - (b) be based on criteria developed by the Chief Archivist.
- (3) Further audits must be conducted at intervals of not less than 5 years and not more than 10 years after the date of the previous audit (but it is not necessary to conduct an audit of all public offices in the same year).

**34 Audit of recordkeeping practices of Chief Archivist**

- (1) The Minister must commission an independent audit of the recordkeeping practices of the Chief Archivist—
  - (a) as soon as is reasonably practicable after the date that is 5 years from the commencement of this Act; and
  - (b) at intervals of not less than 5 years and not more than 10 years after the date of the previous audit.
- (2) An audit commissioned under subsection (1) must—
  - (a) cover the aspects of recordkeeping practices specified for the purpose of the audit by the Minister; and
  - (b) be based on criteria specified by the Minister on the advice of the Archives Council.

Section 34 heading: amended, on 1 February 2011, by section 15(1) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 34(1): amended, on 1 February 2011, by section 15(2) of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

**35 Audit reports**

As soon as is reasonably practicable after the end of the financial year in which an audit has been conducted—

- (a) the Chief Archivist must prepare a report to the Minister on the audits conducted under section 33; and
- (b) the Minister must prepare a report on the audit conducted under section 34; and
- (c) in each case, the Minister must present the report to the House of Representatives.

Subpart 4—Estray records, prescribed records, protected records,  
Ministers' papers, and private records

*Estray records*

**36 Inspection of estray records**

- (1) The Chief Archivist may inspect an estray record by giving written direction to the person in possession of the estray record to produce it for inspection by the Chief Archivist at the time and place specified by the Chief Archivist.
- (2) The time and place specified under subsection (1) must be reasonable in the circumstances.
- (3) A person who receives a direction under subsection (1) must comply with the direction and, if necessary, assist the Chief Archivist to enter any premises occupied by the person for the purpose of inspecting the estray record.

**37 Other requirements for estray records**

- (1) The Chief Archivist may, by notice in writing, direct a person in possession of an estray record to do any of the following:
  - (a) to manage the estray record in accordance with any standards or instructions issued by the Chief Archivist;
  - (b) to make the estray record available for public access or for copying;
  - (c) to transfer the estray record to the control of the Chief Archivist or of the controlling public office within the time specified in the notice;
  - (d) in the case of an estray record that is a protected record, to transfer it to the control of the Chief Archivist or the controlling local authority.
- (2) A person who receives a notice must comply with that notice.

*Prescribed records*

**38 Prescribed records**

- (1) The Minister may, for the purposes of this Act, by notice in the *Gazette* made on the recommendation of the Chief Archivist, declare that a record is a prescribed record, or 1 or more classes of records are prescribed records.
- (2) Subsection (1) does not apply if the record is—
  - (a) a public record under the control of the controlling public office; or
  - (b) a public archive under the control of the Chief Archivist; or
  - (c) a local authority record, or a local authority archive, under the control of the controlling local authority.
- (3) A notice must describe the record or class of records to which the notice applies.
- (4) A person who possesses a prescribed record—

- (a) may transfer the prescribed record to the possession of Archives New Zealand, an approved repository, a public office, or a local authority as directed by the Chief Archivist:
  - (b) must not transfer the prescribed record to any other person unless that person—
    - (i) has first given the Chief Archivist the opportunity to purchase the prescribed record on behalf of the Crown; and
    - (ii) before transferring the prescribed record to another person, has informed that other person that the record is a prescribed record.
- (5) The Chief Archivist must note the status of a prescribed record in the register of prescribed records, in accordance with section 19(1)(c).
- (6) The Chief Archivist must—
- (a) give written notice to the holder of a prescribed record if the status of the record as a prescribed record is revoked; and
  - (b) record the change of status in the register of prescribed records.

### **39 Acquisition of prescribed records**

The Chief Archivist may—

- (a) direct that a prescribed record be copied for, and at the expense of, the Chief Archivist:
- (b) acquire a prescribed record, whether or not with compensation, on the conditions agreed by the Chief Archivist and the person who has the custody, management, control, or ownership of the prescribed record.

#### *Protected records of local authorities*

### **40 Protected records of local authorities**

- (1) The Chief Archivist may, by notice in the *Gazette* made after consultation with any local authority concerned, declare that a local authority record is a protected record for the purposes of this Act.
- (2) A local authority must provide for the adequate protection and preservation of a protected record it holds, in accordance with any applicable standards or instructions issued by the Chief Archivist.
- (3) A local authority must not dispose of a protected record unless the administrative head of the local authority has—
  - (a) given written notice to the Chief Archivist of his or her intention to dispose of the protected record; and
  - (b) identified the protected record concerned; and
  - (c) specified how he or she intends to dispose of the protected record.

- (4) Not later than 3 months after receiving written notice under subsection (3), the Chief Archivist must—
- (a) direct the local authority in writing to transfer the protected record to the control of the Chief Archivist, subject to conditions (if any) agreed by the administrative head of the local authority and the Chief Archivist; or
  - (b) authorise the disposal of the protected record identified under subsection (3)(b).

#### **41 Transitional provision**

Despite section 66(b) (which repeals Part 17 of the Local Government Act 1974), section 40 applies to any classes of local archives protected by notice in the *Gazette* given under section 256 of the Local Government Act 1974 as if those classes of local archives were protected records under this Act.

#### *Parliamentary records, Ministers' papers, private records, and other records*

#### **42 Chief Archivist may accept parliamentary records, Ministers' papers, and private and other records**

- (1) The Chief Archivist may accept for deposit in Archives New Zealand—
- (a) parliamentary records:
  - (b) Ministers' papers:
  - (c) private records that complement the public archives and that—
    - (i) record significant historical events; or
    - (ii) relate to an existing or former public office or organisation connected with government in New Zealand; or
    - (iii) relate to persons who are or have been significant in any aspect of New Zealand history, politics, or culture:
  - (d) records referred to in section 3(a) to (d) of the Archives Act 1957 that were made or received by a government office before the commencement of this Act.
- (2) Parliamentary records deposited under subsection (1)(a) may be subject to conditions agreed to in writing between the Chief Archivist and the Clerk of the House.
- (3) Papers and records deposited under subsection (1)(b) or (c)—
- (a) remain under the care of the Chief Archivist; and
  - (b) unless the Minister or the person depositing the papers or records otherwise agrees in writing, remain in the ownership and control of the Minister or that person; and
  - (c) may be subject to conditions agreed to in writing by the Minister or the person depositing the papers or records and the Chief Archivist, including conditions relating to—

- (i) public access to the papers or records:
  - (ii) custody and control of the papers or records:
  - (iii) publication, acknowledgement, and copying of the papers or records:
  - (iv) future ownership of the papers or records.
- (4) Papers and records referred to in subsection (1) are not subject to the Official Information Act 1982 just because they are deposited in Archives New Zealand.
- (5) Records deposited under subsection (1)(d) remain—
- (a) under the control of the controlling public office; and
  - (b) subject to the Archives Act 1957 as if that Act continued to apply to them.
- (6) The Crown and its agents, including the Chief Archivist, must comply with any conditions to which the deposit of papers or records referred to in subsection (1) is subject.

### **Part 3**

#### **Public access**

##### *Determination of access status as open or restricted*

#### **43 Requirement to classify access status**

- (1) When public records have been in existence for 25 years or are about to be transferred to the control of the Chief Archivist under section 21, the administrative head of the controlling public office must, in accordance with section 44, classify the records as either—
- (a) open access records; or
  - (b) restricted access records.
- (2) The administrative head of a controlling public office may, at any time, change the classification of a public record, in accordance with section 44.

#### **44 Basis for determining access status**

- (1) In classifying the access status of a public record under section 43, the administrative head of the controlling public office must consider whether—
- (a) there are good reasons to restrict public access to the public record, having regard to any relevant standard or advice issued by the Chief Archivist; or
  - (b) another enactment requires the public record to be withheld from public access.

- (2) If there are no good reasons to restrict public access under subsection (1)(a), or if no enactment requires a public record to be withheld from public access, the administrative head of the controlling public office must classify the record as an open access record.
- (3) If there are good reasons for restricting public access under subsection (1)(a), or if another enactment requires a public record to be withheld from public access, the administrative head of the controlling public office must, in consultation with the Chief Archivist,—
  - (a) determine whether it is necessary—
    - (i) to restrict public access to the public record for a specified period of time; or
    - (ii) to permit public access on conditions; and
  - (b) if paragraph (a)(ii) applies, determine the conditions appropriate for public access.
- (4) The administrative head of a controlling public office may at any time, in consultation with the Chief Archivist, vary or withdraw a condition imposed under subsection (3)(b).
- (5) A public record subject to a restriction under subsection (3)(a)(i) becomes an open access record on the withdrawal of the restriction.
- (6) The department and the Chief Archivist must comply with conditions of public access imposed under subsection (3)(b).
- (7) A restriction on public access to a public record must be noted in the public access register, in accordance with section 19(1)(d).
- (8) Every controlling public office is responsible for dealing with requests for official information under the Official Information Act 1982 and requests for personal information under the Privacy Act 2020.

Section 44(6): amended, on 1 February 2011, by section 16 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

Section 44(8): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

### *Access status of local authority records*

#### **45 Requirement to classify access status of local authority records**

- (1) When a local authority record becomes a local authority archive, the administrative head of the controlling local authority must, in accordance with section 46, classify it as either—
  - (a) an open access record; or
  - (b) a restricted access record.
- (2) The administrative head of a controlling local authority may, at any time, change the classification of a local authority record in accordance with section 46.

**46 Basis for determining access status of local authority records**

- (1) In classifying the access status of a local authority record under section 45, the administrative head of the controlling local authority must consider whether—
  - (a) there are good reasons to restrict public access to the local authority record, having regard to any relevant standard or advice issued by the Chief Archivist; or
  - (b) another enactment requires the local authority record to be withheld from public access.
- (2) If there are no good reasons to restrict public access under subsection (1)(a), or if no enactment requires a local authority record to be withheld from public access, the administrative head of the controlling local authority must classify the record as an open access record.
- (3) However, if there are good reasons to restrict public access under subsection (1)(a), or if another enactment requires a local authority record to be withheld from public access, the administrative head of the controlling local authority must, having regard to any relevant standard or advice issued by the Chief Archivist,—
  - (a) determine whether it is necessary—
    - (i) to restrict public access to the local authority record for a specified period of time (which must not be for a period greater than 25 years); or
    - (ii) to permit public access on conditions; and
  - (b) if paragraph (a)(ii) applies, determine the conditions appropriate for public access.
- (4) Despite subsection (3)(a)(i), the administrative head of the controlling local authority may, if there is good reason to do so, restrict public access to the local authority record for 1 or more further specified periods not exceeding 25 years for each further period.
- (5) At any time, the administrative head of the controlling local authority, having regard to any relevant standard or advice issued by the Chief Archivist, may vary or withdraw a condition imposed under subsection (3)(b).
- (6) A local authority record subject to a restriction under subsection (3)(a)(i) becomes an open access record on the withdrawal of the restriction.

Section 46(2): amended, on 7 July 2010, by section 4 of the Public Records Amendment Act 2010 (2010 No 79).

*Open access records***47 Public inspection of open access records**

Unless this Act provides otherwise, an open access record must be made available for inspection by members of the public free of charge as soon as is



reasonably practicable after a request to inspect the record is made to the public office, the local authority, the approved repository, or Archives New Zealand, whichever has possession of the open access record.

**48 Publication or copying of public archives**

The Chief Archivist may give written authority, on any conditions that the Chief Archivist thinks appropriate, for the publication or copying of a public archive that is an open access record.

**49 Prohibition on public access or copying**

- (1) The Chief Archivist may prohibit the public from accessing or copying a public archive or protected record in his or her control for any period that he or she thinks necessary—
  - (a) in the interest of preserving the public archive or protected record; or
  - (b) pending the classification, repair, or other treatment of the public archive or protected record.
- (2) A prohibition on public access must be noted in the public access register, in accordance with section 19(1)(d).
- (3) The administrative head of a local authority may prohibit the public from accessing or copying a local authority archive for any period that he or she thinks necessary—
  - (a) in the interest of preserving the local authority archive; or
  - (b) pending the classification, repair, or other treatment of the local authority archive.

*Restricted access records*

**50 Period for which restricted access may apply**

The period of time for which public access to a public record may be restricted under section 44(3)(a)(i), may—

- (a) on the written request of the Chief Archivist, be reviewed after the expiry of 10 years from the date that the restriction is recorded in the public access register; and
- (b) before its expiry, be extended for further periods as specified by the administrative head of the controlling public office.

## **Part 4**

### **Appeal process and miscellaneous provisions**

#### **Subpart 1—Appeal process**

##### **51 Appeal to Minister by public office or by local authority**

- (1) The administrative head of a controlling public office may appeal to the Minister against a decision of the Chief Archivist—
  - (a) declining a request to defer the transfer of a public record under section 22(1)(b):
  - (b) instructing a public office under section 22(1)(c) to maintain and control its electronic public records beyond the expiry of the 25-year period referred to in that provision:
  - (c) declining a request for an exemption under section 30.
- (2) The administrative head of a controlling local authority may appeal to the Minister against a decision of the Chief Archivist to decline a request for an exemption under section 30.
- (3) Sections 52, 53(3), and 54 to 56 apply, with the necessary modifications, to an appeal by a controlling local authority under this Act.

##### **52 Commencement of appeal**

- (1) An appeal under section 51(1) is commenced by the administrative head of a controlling public office lodging a written notice with the Minister within 20 working days after the date when the decision of the Chief Archivist is notified to the controlling public office.
- (2) The notice of appeal must include—
  - (a) full details of the decision that is the subject of the appeal; and
  - (b) the reasons for the appeal.

##### **53 Effect of appeal**

- (1) Subsections (2) and (3) apply—
  - (a) between the time when the Chief Archivist makes a decision that is subject to a right of appeal and the expiry of the time for lodging an appeal; or
  - (b) if an appeal is lodged, between the time when the decision is made and the time when the appeal is determined by the Minister and notified under section 56(3) to the Chief Archivist and the administrative head of the controlling public office or of the local authority, as the case may be.
- (2) During the period of time referred to in subsection (1)(a) or (b), as the case may be,—

- (a) the Chief Archivist must not issue an instruction or take further action in respect of the matter to which the appeal relates;
  - (b) in the case of an appeal under section 51(1)(a), the public office is not required to transfer the public record concerned;
  - (c) in the case of an appeal under section 51(1)(b), the public office must continue to maintain and control its electronic records;
  - (d) in the case of an appeal under section 51(1)(c), the public office must continue to comply with the standard or instruction from which an exemption has been requested.
- (3) If a local authority appeals under section 51(2),—
- (a) the Chief Archivist must not issue an instruction or take further action in respect of the matter to which the appeal relates; and
  - (b) the local authority must continue to comply with the standard or instruction from which an exemption has been requested.

#### **54 Process of appeal**

As soon as is reasonably practicable after receiving a notice of appeal under section 52, the Minister must—

- (a) notify the Archives Council and the Chief Archivist that an appeal has been lodged; and
- (b) provide copies of all relevant documentation received from the controlling public office to—
  - (i) the Archives Council; and
  - (ii) the Chief Archivist.

#### **55 Recommendation of Archives Council**

As soon as is reasonably practicable after receiving notification under section 54, the Archives Council must—

- (a) consider the appeal and the reasons submitted for the appeal; and
- (b) make a recommendation to the Minister to allow or disallow the appeal, in whole or in part; and
- (c) state the reasons for its recommendation.

#### **56 Decision of Minister**

- (1) The Minister may allow or disallow the appeal, in whole or in part.
- (2) Before the Minister makes a decision under subsection (1), the Minister must—
  - (a) consult with the responsible Minister of the controlling public office that has lodged the appeal; and
  - (b) have regard to the recommendations of the Archives Council.
- (3) The Minister must—

- (a) give written notice of the decision, with reasons, to—
    - (i) the administrative head of the controlling public office; and
    - (ii) the Chief Archivist; and
    - (iii) the Archives Council; and
  - (b) give public notice of the decision by notice in the *Gazette*.
- (4) The decision of the Minister is final and binds the Chief Archivist and the controlling public office.

### Subpart 2—Miscellaneous provisions

#### **57 Application of Copyright Act 1994**

This Act does not limit the Copyright Act 1994.

#### **58 Application of Official Information Act 1982**

To avoid doubt, public records transferred under this Act to the possession of Archives New Zealand or an approved repository are not subject to the Official Information Act 1982 just because they have been so transferred.

#### **59 Charges for services**

- (1) The Chief Archivist may charge for research, copying, or other services provided in relation to a request for access to a public archive.
- (2) Charges made under subsection (1) must be reasonable, having regard to the labour and materials involved in undertaking the service.

#### **60 Protection of names**

- (1) No person may, except with the consent of the Governor-General in Council, be incorporated or registered under another enactment or in another manner under the following names:
  - (a) Archives New Zealand (Te Rua Mahara o te Kāwanatanga):
  - (b) Archives New Zealand:
  - (c) Te Rua Mahara o te Kāwanatanga:
  - (d) National Archives:
  - (e) Te Whare Tohu Tuhituhinga o Aotearoa:
  - (f) another name that so resembles the names in any of paragraphs (a) to (e) as to be likely to mislead a person.
- (2) No person other than the department may, either alone or with another person, trade or carry on business or exercise the functions for which it was formed—
  - (a) under a name specified in subsection (1); or
  - (b) under a name that so resembles a name specified in that subsection as to be likely to mislead a person.

Section 60(2): amended, on 1 February 2011, by section 17 of the Public Records Amendment Act (No 2) 2010 (2010 No 133).

### *Offences and penalties*

#### **61 Offences**

Every person commits an offence who wilfully or negligently—

- (a) damages a public record; or
- (b) disposes of or destroys a public record otherwise than in accordance with the provisions of this Act; or
- (c) contravenes or fails to comply with any provision of this Act or any regulations made under it.

#### **62 Penalties**

- (1) Every person who commits an offence against section 61 is liable,—
  - (a) in the case of an individual, to a fine not exceeding \$5,000;
  - (b) in every other case, to a fine not exceeding \$10,000.
- (2) A person convicted of an offence against section 61 may, in addition to any penalty imposed for the offence, be prohibited by order of the court from having access to Archives New Zealand for any period that the court thinks fit.

### *Regulation-making power*

#### **63 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) regulating the transfer of public records from any public office to Archives New Zealand or to an approved repository;
  - (b) regulating the manner of destruction or other disposal of public records;
  - (c) regulating the admission of the public to Archives New Zealand and the use by the public of public archives deposited in Archives New Zealand;
  - (d) providing for the custody and preservation of Ministers' papers and private records deposited in Archives New Zealand, and prescribing the fees (if any) to be charged for that custody and preservation;
  - (e) prescribing forms for the purposes of this Act;
  - (f) providing for matters that are contemplated by this Act or are necessary for its administration or for giving it full effect.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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<b>Legislation Act 2019 requirements for secondary legislation made under this section</b>		
<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 63(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

### *Savings and transitional provisions*

#### **64 Savings**

- (1) Despite section 66(a), a matter referred to in subsection (2) that is in force immediately before the commencement of this Act continues in force for the period (if any) provided for in subsection (2), as if this Act had not been enacted.
- (2) The matters to which subsection (1) applies are—
  - (a) a certificate issued under section 8(2)(c) of the Archives Act 1957, until whichever is the sooner of—
    - (i) the expiry of the period of deferral directed by the Minister; or
    - (ii) a transfer made under section 21(1) of this Act; or
    - (iii) an agreement made under section 22(1)(b) of this Act; and
  - (b) in the case of a public archive in the possession of Archives New Zealand, conditions imposed under section 14 of the Archives Act 1957, for the period (if any) stated in the conditions; and
  - (c) an authorisation given under section 21 of the Archives Act 1957, until whichever is the sooner of—
    - (i) the completion of the authorised publication; or
    - (ii) the expiry of the authorisation.
- (3) This Act does not apply to public records referred to in section 3(a) to (d) of the Archives Act 1957 and made or received by the relevant Government office before the commencement of this Act.
- (4) However, section 42(1)(d) overrides subsection (3).

#### **65 Transitional provisions**

- (1) Despite section 66(a), the agreements or other matters referred to in subsection (2) that are in force immediately before the commencement of this Act continue in force in the manner specified in that subsection.
- (2) The agreements and other matters to which subsection (1) applies are—

- (a) an agreement made under section 8(2)(a) or (b) of the Archives Act 1957, for the term of the agreement, as if it were made under section 22(1)(b) of this Act:
  - (b) an agreement made under section 11 of the Archives Act 1957, for the term of the agreement, as if it were made under section 42(3)(c) of this Act:
  - (c) an agreement made under section 13 of the Archives Act 1957, as if it were made under section 24 of this Act:
  - (d) a certificate of authority given under section 16(6) of the Archives Act 1957—
    - (i) as if it authorised the disposal of public records; and
    - (ii) as if it were given under section 20(1)(c) of this Act; and
    - (iii) until the authorised disposals are completed:
  - (e) an approval given or deposit made under section 19(1) of the Archives Act 1957, as if the approval were given and the deposit made under section 26 of this Act:
  - (f) a deposit made by the Registrar of Deeds under section 19(2) of the Archives Act 1957, as if consent were given under section 26 of this Act:
  - (g) in the case of a public archive in the possession of Archives New Zealand, restrictions on inspection imposed under section 20(1)(b), (c), or (ca) of the Archives Act 1957, as if the public archive had been classified under section 43(1)(b) as a restricted access record in accordance with section 44(3):
  - (h) in the case of a public archive in the possession of Archives New Zealand, conditions referred to in subsection (3) as to public access, as if the public archive had been classified under section 43(1)(b) as a restricted access record in accordance with section 44(3).
- (3) Subsection (2)(h) applies to conditions imposed under—
- (a) section 8(3) of the Archives Act 1957 on public archives that have been in existence for 25 years or more:
  - (b) section 10(2) of the Archives Act 1957 on public archives that have been in existence for less than 25 years:
  - (c) section 16(7) of the Archives Act 1957.

Section 65(2)(b): amended, on 7 July 2010, by section 5 of the Public Records Amendment Act 2010 (2010 No 79).

### *Repeals and amendments*

## **66 Repeals**

The following enactments are repealed:

- (a) the Archives Act 1957:
- (b) Part 17 of the Local Government Act 1974.

**67 Amendments to enactments**

- (1) The Acts specified in Parts 1 and 2 of the Schedule are amended in the manner indicated in those Parts.
- (2) The regulations specified in Part 3 of the Schedule are amended in the manner indicated in that Part.



## Schedule Enactments amended

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### Part 1 Consequential amendments to Acts

**Adoption (Intercountry) Act 1997 (1997 No 109)**

*Amendment(s) incorporated in the Act(s).*

**Archives, Culture, and Heritage Reform Act 2000 (2000 No 32)**

*Amendment(s) incorporated in the Act(s).*

**Births, Deaths, and Marriages Registration Act 1995 (1995 No 16)**

*Amendment(s) incorporated in the Act(s).*

**Copyright Act 1994 (1994 No 143)**

*Amendment(s) incorporated in the Act(s).*

**Crown Research Institutes Act 1992 (1992 No 47)**

*Amendment(s) incorporated in the Act(s).*

**Department of Justice (Restructuring) Act 1995 (1995 No 39)**

*Amendment(s) incorporated in the Act(s).*

**Education Act 1989 (1989 No 80)**

*Amendment(s) incorporated in the Act(s).*

**Electronic Transactions Act 2002 (2002 No 35)**

*Amendment(s) incorporated in the Act(s).*

**Energy Efficiency and Conservation Act 2000 (2000 No 14)**

*Amendment(s) incorporated in the Act(s).*

**Families Commission Act 2003 (2003 No 128)**

*Amendment(s) incorporated in the Act(s).*

**Flags, Emblems, and Names Protection Act 1981 (1981 No 47)**

*Amendment(s) incorporated in the Act(s).*

**Gambling Act 2003 (2003 No 51)**

*Amendment(s) incorporated in the Act(s).*

**Housing Corporation Act 1974 (1974 No 19)**

*Amendment(s) incorporated in the Act(s).*

**Income Tax Act 1994 (1994 No 164)**

*Amendment(s) incorporated in the Act(s).*

**National Library of New Zealand (Te Puna Matauranga o Aotearoa) Act 2003 (2003 No 19)**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Public Health and Disability Act 2000 (2000 No 91)**

*Amendment(s) incorporated in the Act(s).*

**New Zealand Trade and Enterprise Act 2003 (2003 No 27)**

*Amendment(s) incorporated in the Act(s).*

**Ombudsmen Act 1975 (1975 No 9)**

*Amendment(s) incorporated in the Act(s).*

**Plumbers, Gasfitters, and Drainlayers Act 1976 (1976 No 69)**

*Amendment(s) incorporated in the Act(s).*

**Public Trust Act 2001 (2001 No 100)**

*Amendment(s) incorporated in the Act(s).*

**State Sector Act 1988 (1988 No 20)**

*Amendment(s) incorporated in the Act(s).*

**Statistics Act 1975 (1975 No 1)**

*Amendment(s) incorporated in the Act(s).*

**Part 2****Related amendments to Acts****Police Complaints Authority Act 1988 (1988 No 2)**

*Amendment(s) incorporated in the Act(s).*

**Tax Administration Act 1994 (1994 No 166)**

*Amendment(s) incorporated in the Act(s).*

**Part 3**  
**Consequential amendments to regulations**

**Children, Young Persons, and Their Families (Residential Care) Regulations 1996 (SR 1996/354)**

*Amendment(s) incorporated in the regulations.*

**Copyright (General Matters) Regulations 1995 (SR 1995/146)**

*Amendment(s) incorporated in the regulations.*

**New Zealand Public Health and Disability (Archives) Regulations 2001 (SR 2001/248)**

*Amendment(s) incorporated in the regulations.*

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## Public Records Amendment Act (No 2) 2010

Public Act	2010 No 133
Date of assent	20 December 2010
Commencement	see section 2

### 1 Title

This Act is the Public Records Amendment Act (No 2) 2010.

### 2 Commencement

This Act comes into force on 1 February 2011.

*Transfer of employees of Archives New Zealand and related matters*

### 18 Transfer of Archives New Zealand employees to department

- (1) Sections 30E, 30F, and 30G of the State Sector Act 1988 apply to every person who was, immediately before the commencement of this Act, an employee in Archives New Zealand.
- (2) For the purposes of subsection (1), sections 30E, 30F, and 30G of the State Sector Act 1988 apply as if they had been declared to apply by Order in Council under section 30C of that Act.

## Notes

### **1** *General*

This is a consolidation of the Public Records Act 2005 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Data and Statistics Act 2022 (2022 No 39): section 107(1)

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Intelligence and Security Act 2017 (2017 No 10): section 335

District Court Act 2016 (2016 No 49): section 261

Harmful Digital Communications Act 2015 (2015 No 63): section 28

Public Finance (Mixed Ownership Model) Amendment Act 2012 (2012 No 45): section 11

Public Records Amendment Act (No 2) 2010 (2010 No 133)

Public Records Amendment Act 2010 (2010 No 79)