

1973

VICTORIA.



ANNO VICESIMO SECUNDO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 8418.

An Act with respect to the Establishment of a Public Record Office and the Preservation, Management and Utilization of the Public Records of the State.

[17th April, 1973.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

Short title.

1. This Act may be cited as the *Public Records Act 1973*.

Interpretations.

2. (1) In this Act unless inconsistent with the context or subject-matter—

“ Prescribed.”

“ Prescribed ” means prescribed by this Act or the Regulations.

“ Prescribed record.”

“ Prescribed record ” means a record declared by the Governor in Council pursuant to section 16 to be a prescribed record for the purposes of this Act.

“ Public Office.”

“ Public Office ” means—

(a) any department branch or office of the Government of Victoria ;

(b) any public statutory body corporate or unincorporate ;

(c) any

- (c) any municipality or other body constituted by or under the *Local Government Act 1958* ; and No. 6299.
 (d) any other local governing body corporate or unincorporate.

“ Public officer ” means any person employed in a public office. “ Public officer.”

“ Public record ” means— “ Public record.”

- (a) any record made or received by a public officer in the course of his duties ; and
 (b) any record made or received by a court or person acting judicially in Victoria—
 but does not include a record which is beneficially owned by a person or body other than the Crown or a public office.

“ Record ” means any document within the meaning of the *Evidence Act 1958*. “ Record.”
No. 6246.

(2) The Governor in Council may determine—

- (a) that any office or body is or is not a public office within the meaning of this Act ; and
 (b) that any record is or is not a public record within the meaning of this Act—

and notice of any such determination shall be published in the *Government Gazette*.

(3) The Governor in Council may by Order published in the *Government Gazette* declare that all or any specified provisions of this Act shall not apply to or in relation to a record or record of a class of records specified in the Order.

(4) This Act does not apply to or in relation to a record transferred for the purpose of preservation to a public office by a person or body other than the Crown or a public office.

3. For the better preservation management and utilization of the public records of the State there shall be established in the Chief Secretary's Department an Office to be known as the Public Record Office. Public Record Office.

4. (1) There shall be a Public Records Advisory Council consisting of seven members appointed by the Governor in Council of whom— Public Records Advisory Council.

- (a) four shall be persons holding the position of permanent head of a department specified in the Second Schedule to the *Public Service Act 1958* or their nominees ;
 (b) one shall be appointed from a panel of three names submitted by the executive committee of the Municipal Association of Victoria ;
 (c) one shall be a person holding a senior office in a tertiary institution in Victoria ; and

(d) one

- (d) one shall be the State Librarian or his nominee.
- (2) The Governor in Council shall appoint one of the members to be Chairman of the Council.
- (3) The Governor in Council may remove any member of the Council from office.
- (4) Subject to this section a member of the Council—
- (a) shall hold office for the period (not exceeding three years) and subject to the terms and conditions specified in his instrument of appointment ; and
- (b) shall be eligible for re-appointment.
- (5) The office of a member of the Council shall become vacant—
- (a) at the expiration of his term of office ;
- (b) if he dies ;
- (c) if he is removed from office by the Governor in Council ;
- (d) if he resigns in writing under his hand addressed to the Governor in Council ; or
- (e) if without leave granted by the Council he fails to attend three successive meetings of the Council.
- (6) A quorum of the Council shall consist of four members.
- (7) Subject to this Act the Council may regulate its own proceedings.
- (8) Each member of the Council shall be entitled to the travelling expenses (if any) prescribed.

Functions of
Public Records
Advisory
Council.

5. The Public Records Advisory Council—

- (a) in consultation with the Keeper of Public Records, shall promote co-operation between the Public Record Office and public offices ; and
- (b) may report and make recommendations to the Minister on any matter relating to the administration of this Act.

Appointment of
Keeper of
Public Records
and other
officers.

6. (1) Subject to the *Public Service Act* 1958 there shall be appointed—

- (a) an officer to be called the Keeper of Public Records ; and
- (b) such other officers and employés as are necessary for the purposes of this Act.

(2) Subject to this Act and to the general direction and control of the Minister, the Keeper of Public Records shall have the management and control of the Public Record Office and of all public records therein.

7. The Keeper of Public Records shall be responsible for—

Responsibilities
of Keeper of
Public Records.

- (a) the preservation and security of public records under his control ;
- (b) the logical and orderly classification of such records and the publication of lists indexes and other guides facilitating their use ;
- (c) the duplication and reproduction of public records for official and other purposes ; and
- (d) the authentication of copies of and extracts from public records required as evidence in legal proceedings or for other purposes.

8. The Keeper of Public Records may—

Publications.

- (a) prepare and cause to be published articles concerning the activities of and the facilities provided by the Public Record Office ; and
- (b) arrange for the publication, upon any terms and conditions he thinks fit, of any public record under his control or of any articles prepared therefrom.

9. (1) Where the Minister is of opinion that any records required by this Act to be transferred from a public office to the Public Record Office contain matters of such a private or personal nature that they should not be open for public inspection he may, after consultation with the Minister responsible for the administration of the public office concerned, declare those records to be private or personal records and not available for public inspection.

Personal or
private
records may
be withheld.

(2) The Minister, after consultation with the Minister responsible for the administration of the public office from which any such private or personal records were transferred, or if the case so requires, of the public office at the time exercising the functions to which the records relate, may—

- (a) revoke or vary any declaration under sub-section (1) in respect of those records ; or
- (b) permit, on any conditions or restrictions specified, all or any of those records to be open for inspection by any specified person or class of persons.

Records may
be withheld
for up to
25 years.

10. (1) The Minister by notice published in the *Government Gazette* may—

- (a) declare that any specified records or records of any specified class shall not be available for public inspection for a period of five years after the date of their transfer to the Public Record Office ; and
- (b) from time to time for reasons specified in the notice extend, for not more than five years at any one time, any period so declared—

but except so far as is otherwise provided in section 9, access by the public to any public record shall not be withheld for a period exceeding 25 years after its transfer to the Public Record Office.

(2) The Minister may—

- (a) revoke or vary any declaration under sub-section (1) ; or
- (b) permit on any conditions or restrictions specified, all or any of the records concerned to be open for inspection by any specified person or class of persons.

Inspection
and copying
of public
records.

11. Subject to this Act, the Keeper of Public Records shall cause reasonable facilities to be available to the public for inspecting and obtaining copies of public records under his control.

Standards for
management of
public records.

12. The Keeper of Public Records shall establish standards for the efficient management of public records and in particular with respect to—

- (a) the creation, maintenance and security of public records ;
- (b) the selection of public records worthy of preservation ;
- (c) the transfer of public records to the Public Record Office ; and
- (d) the segregation and disposal of public records not worthy of preservation—

and shall assist public officers in applying these standards to records under their control.

Duties of
officer in
charge of a
public office

13. The officer in charge of a public office—

- (a) shall cause to be made and kept full and accurate records of the business of the office ;

(b) shall

- (b) shall be responsible, with the advice and assistance of the Keeper of Public Records, for the carrying out within the office of a programme of records management in accordance with the standards established under section 12 by the Keeper of Public Records ; and
- (c) shall take all action necessary for the recovery of any public records unlawfully removed from the office.

14. (1) Where it appears to the Minister that a place outside the Public Record Office is suitable for the safe-keeping and preservation of public records he may appoint it as a place of deposit for any specified class of public records.

Power to appoint place outside Public Record Office for deposit of public records.

(2) The Keeper of Public Records may from time to time cause public records of the appropriate class to be transferred to a place of deposit appointed under this section or to be transferred from such a place to the Public Record Office.

(3) Public records in a place of deposit appointed under this section shall be in the custody and under the control of the Keeper of Public Records.

15. (1) The Keeper of Public Records may, out of moneys lawfully available for the purpose, purchase any record which in his opinion is worthy of preservation.

Power to purchase or to transfer records for safe-keeping.

(2) The owner of any record worthy of preservation may, with the consent of the Minister and subject to any terms and conditions agreed upon by the owner and the Minister, transfer the record to the custody of the Keeper of Public Records for safe-keeping.

16. (1) Where the Governor in Council upon the recommendation of the Public Records Advisory Council is satisfied that a record—

Prescribed records—owner to lodge notice of possession.

- (a) would be a public record within the meaning of this Act but for the fact that it is beneficially owned by a person or body other than the Crown or a public office ;
- (b) is of special historic significance to Victoria ; and
- (c) should be preserved by the State—

he may by notice published in the *Government Gazette* declare that record to be a prescribed record for the purposes of this Act.

(2) The owner of a prescribed record shall, within 60 days after the record is declared to be a prescribed record or within 60 days after acquiring the record, lodge a notice of possession in or to the effect of the form prescribed with the Keeper of Public Records.

Penalty : \$100.

(3) The

- (3) The Keeper of Public Records may by notice in writing—
- (a) require the owner of a prescribed record to produce the record within 21 days to the Public Record Office for copying ; and
 - (b) give any directions in relation to the safe-keeping of the record that in his opinion are necessary for its protection or preservation.

(4) Where a requirement or direction contained in a notice given under sub-section (3) is not complied with the owner of the record concerned, unless the record has been transferred in accordance with this Act to the custody of the Keeper of Public Records, shall be guilty of an offence.

Penalty : \$100.

(5) Where pursuant to a notice under sub-section (3) a prescribed record has been produced for copying, the Keeper of Public Records shall not cause or permit any copy of the record retained by him to be published or a facsimile of any such copy to be made by a member of the public.

Sale or other disposal of prescribed records.

17. (1) The owner of a prescribed record shall not sell the record otherwise than in accordance with the provisions of this section and shall not in any other way dispose of the record without the consent of the Minister.

(2) Before entering into an agreement to sell a prescribed record the owner shall give to the Minister at least seven days notice in writing of his intention to do so.

(3) An agreement to sell a prescribed record—

- (a) shall be in writing ;
- (b) shall set out—
 - (i) the full name and address of the parties to the agreement ;
 - (ii) a description of the record concerned ; and
 - (iii) the purchase price of the record ; and
- (c) shall be subject to the consent of the Minister.

(4) Upon entering into an agreement to sell a prescribed record the owner of the record shall forthwith send a copy of the agreement to the Minister.

(5) Within 30 days after receipt of a copy agreement and after consultation with the Public Records Advisory Council, the Minister by notice in writing—

- (a) shall advise the owner of the record whether or not he consents to the sale ; and

(b) where

(b) where he refuses to consent, may advise the owner that he intends to acquire the record.

(6) A notice advising of the Minister's intention to acquire a prescribed record shall require the owner to transfer the record to the custody of the Keeper of Public Records within the time, being not less than 14 days, specified in the notice.

(7) Where a prescribed record is acquired by the Minister pursuant to this section the Minister shall out of moneys lawfully available for the purpose pay to the person from whom it is acquired the amount of the purchase price set out in the copy agreement of sale of the record forwarded to the Minister under sub-section (4).

(8) A person who—

(a) fails to comply with any provision of this section ; or

(b) fails to transfer a record to the custody of the Keeper of Public Records in accordance with a requirement of the Minister under this section—

shall be guilty of an offence.

Penalty : \$500.

18. (1) Upon the death of the owner of a prescribed record, the record shall become the property of the State and shall be transferred to the custody of the Keeper of Public Records.

Prescribed records to become property of State upon death of owner.

(2) The Minister shall out of moneys lawfully available for the purpose pay compensation to the estate of the deceased owner of any prescribed record transferred to the custody of the Keeper of Public Records in accordance with this section.

(3) The amount of compensation payable shall be the value of the record as assessed by an independent valuer appointed by the Minister.

(4) Any dispute as to the amount of compensation may be referred by the Minister or the claimant to a Magistrates' Court and the decision of the Court shall be final.

19. A person who unlawfully removes sells damages or destroys a public record shall be guilty of an offence.

Penalty : \$500.

Offence to remove &c. public record without authority

20. Where public records have been transferred to the Public Record Office for the purpose of permanent preservation and the Keeper of Public Records, for any reason, is of opinion that the records should no longer be preserved, he may, after consultation with the officer in charge of the public office from which they were transferred or, if the case so requires, of the officer in

Destruction or transfer of records in Public Record Office.

charge

charge of the public office at the time exercising the functions to which the records relate and with the approval of the Minister, authorize the destruction of those records or their transfer to any person or body wishing to receive them.

Keeper of
Public Records
to report to
Minister.

21. (1) The Keeper of Public Records shall at least once in every year and not later than the 30th day of September in each year lodge with the Minister a report on the carrying out of his functions under this Act during the year ending on the preceding 30th day of June.

(2) The Minister shall cause every report lodged with him under this section to be laid before both Houses of Parliament within three weeks after receiving the report or if Parliament is not then sitting within three weeks after the next meeting of Parliament.

Admissibility
&c. of records
and copies of
records in
Public Record
Office.

22. (1) A public record produced from the Public Record Office shall have the same evidentiary value as if it had been produced from the public office from which it was transferred.

(2) A copy of or an extract from a public record in the Public Record Office or other place of deposit appointed under this Act, if it bears a certificate purporting to be signed by the Keeper of Public Records that it is a true copy or extract—

(a) shall be admissible in evidence without further proof before any court or any person acting judicially as if it was the public record or part of the public record concerned ; and

(b) shall have the same evidentiary value as if it was a copy of or extract from a public record in the office from which it was transferred certified to be a true copy or extract by any person authorized to do so by or under any Act or rule of law.

(3) In sub-section (2) a reference to a public office from which a public record was transferred includes a reference to—

(a) the public office in which the record was originally made lodged registered or otherwise dealt with ; and

(b) any other public office to which the custody of the record was at any time transferred.

23. The Governor in Council may make regulations for or with respect to—

(a) the conditions under which members of the public may inspect public records and use facilities provided by the Public Record Office ;

(b) the copying and reproduction of public records ;

(c) fees

- (c) fees to be charged by the Public Record Office in respect of the making and supplying of copies of public records and of any other services provided ;
- (d) travelling expenses for members of the Public Records Advisory Council ; and
- (e) any matter or thing authorized to be prescribed by this Act or necessary to be prescribed for the purposes of this Act.