

Public Records Bill

Government Bill

As reported from the Government Administration
Committee

Commentary

Recommendation

The Government Administration Committee has examined the Public Records Bill and recommends that it be passed with the amendments shown.

Introduction

The bill will repeal the Archives Act 1957 and the documents and archives provisions of the Local Government Act 1974. Changes in technology, legislation and recordkeeping practices over the last 47 years will be reflected in the bill. Our commentary covers the bill as introduced, and the amendments proposed to the bill, in the appropriate order.

Definition of “records” and “public records”

Many submitters were concerned that the broad definition of “records” and “public records” in clause 4 may lead to uncertainty about the obligations public offices might face under the bill. A number of submitters suggested that these definitions may require public offices to retain every draft of a document, every “post-it” note or text message for 25 years.

However, after due consideration, we are satisfied that the current clause 4 definitions of “record” and “public record” should remain unchanged. We note that “records” has been defined broadly in the

bill to ensure that the comprehensive coverage under the Archives Act 1957 will continue. We also note that under clause 20, records not required to be maintained for accountability or other reasons can be destroyed under authority long before the 25 year period elapses. We also note that, under clause 27, the Chief Archivist will continue to develop standards and guidelines to inform public offices of their obligations under the bill.

Requirement to maintain full and accurate records

Clause 17 of the bill requires all public offices to create and maintain full and accurate records. As some submitters are concerned that there may be room for misinterpretation of clause 17 as it is currently drafted, we recommend that this clause be strengthened by linking the requirement to create and maintain full and accurate records to prudent and normal business practice.

Application of bill to local authorities

A number of submitters suggested that local authorities should be subject to the same requirements as other public offices and that the light regulatory framework in the bill is too light. However, we are satisfied that the current approach of the bill is appropriate. Local authorities, as a separate branch of government, have a direct responsibility to their communities under the Local Government Act 2002 to maintain good recordkeeping standards. We note that the Chief Archivist will set standards for local authorities under clause 27, but local authorities will not be subject to audits as they are accountable to their own communities. We also note that under clause 29, the Chief Archivist will be able to inspect local authority recordkeeping systems to ensure that proper standards are maintained, and protect any important records under clause 40.

Application of bill to schools and private training establishments

Some submitters requested clarification as to whether the Public Records Bill applies to integrated schools, schools with appointed statutory managers and private training establishments. We note that integrated schools and their boards of trustees are established in accordance with the Education Act 1989 and, as they are Crown entities, their records are covered by the bill. Records created by statutory managers appointed to manage on behalf of a board of trustees are also covered by the bill, as the board continues to exist as

a Crown entity. However, we note that private training establishments are not covered by the bill as they are private commercial organisations and not “public offices” as defined in clause 4.

Application of bill to universities

Submissions from some tertiary education institutions questioned whether universities can be properly regarded as part of the public sector and their records as public records. A number of submitters stated that although tertiary education institutions are Crown entities, this is for limited financial accountability and reporting purposes only.

Definition of “public record”

Tertiary education institutions submitted that the definition of “public record” in clause 4 would have the effect of making all records held by academics and students of tertiary education institutions “public records”. During our examination, tertiary education institutions stated that the bill does not distinguish sufficiently between records relating to corporate governance and the very wide range of documentary material continuously produced by tertiary education institutions as part of their scholarly activities. It was submitted that academic research and teaching material belonging to individual academic staff should be exempt from the definition.

We note that there is some confusion amongst submitters as to the precise definition and scope of “public record”. In the present instance, we note that, under the clause 4 definition, records created by academics in their employment are not classified as the property of the tertiary education institution if they are not “created or received by the public office in the conduct of its affairs”. We note that records created by students and academics are not public records for the purposes of the definition in clause 4, unless a tertiary education institution holds the records for their administrative requirements.

We recommend an amendment to clause 4 to minimise confusion amongst academics and students about the scope of the definition of “public record”.

Ownership and control of records

Some submitters were also concerned that this bill could be used as a vehicle to assert Crown ownership over records created by tertiary

education institutions. After due consideration, we are satisfied that the ownership and intellectual property rights in the bill are consistent with all relevant legislation, including the Copyright Act 1994, and that no change is required to protect ownership or intellectual property rights. We note that the bill contains no provision to assert ownership over records or over the intellectual property contained within the records, and that a public office will continue to control access to public records.

Application of bill to State enterprises

We received submissions from State enterprises that the bill does not address the particular position of State enterprises and their legal and commercial obligations. Under section 4 of the State-Owned Enterprises Act 1986, State enterprises are required to be as profitable and efficient as comparable businesses not owned by the Crown. Many submitters were concerned that by including State enterprises within the ambit of the bill, these organisations will have to fulfil a number of obligations that private sector companies will not face, and their ability to compete successfully will be reduced.

Commercial sensitivity

A number of State enterprises were concerned that their inclusion under the ambit of this bill will damage their ability to protect commercially sensitive material. Submitters commented that State enterprises might not be able to assure customers that sensitive commercial information will remain confidential as it could be released into the public domain after 25 years.

However, the majority of us are satisfied that commercial sensitivity and the activities of State enterprises will not be undermined by the bill. We note that State enterprises have responsibility under the bill for determining the access classifications of records after 25 years. We also note that State enterprises can withhold access to records on the basis of commercial sensitivity under the Official Information Act 1982 (subject to a public interest test) and they will continue to exercise this discretion under the bill. We also note that the Chief Archivist can provide advice or issue standards to assist public offices in determining whether there are good reasons to restrict access to their records. Consequently, the majority of us recommend no change to protect commercially sensitive records, or to exempt State enterprises from the ambit of the bill.

Compliance costs

A number of submitters suggested that State enterprises may incur excessive compliance costs under this bill. Some submitters commented that good management was not a major requirement under the bill and that the Chief Archivist did not have to consider the implications for good business practice when making decisions about recordkeeping.

Although the costs of good recordkeeping are difficult to quantify, the majority of us do not consider them to be greater than the costs of poor recordkeeping. We also note the comments of one witness that creating and maintaining records is simply good business practice.

We agree that the Chief Archivist should consider the implications for good management when making decisions under the bill. We recommend that amendments be made to clause 3 and clause 17 to clarify that adequate records created by normal business practices are sufficient to meet the requirements of the bill.

Composition of Archives Council

We asked Archives New Zealand to explain the eligibility criteria for representation on the Archives Council. We were informed that, under clause 14, appointment to the Archives Council requires special knowledge and qualifications that are relevant to the functions of the Archives Council, and that at least two members must have knowledge of tikanga Māori. We were also informed that appointment to the Archives Council will be in accordance with the State Services Commission's guidelines which ensure appropriate representation. Consequently, we recommend no change to clause 14.

Audit requirements under the bill

During our examination, we asked Archives New Zealand whether the independent audits of public offices, as outlined by clause 33, will incur significant compliance costs. We were informed that the bill requires the auditing of each public office on a 5-yearly cycle, and it is not the intention of the bill that every public office be audited every year. We also note that Archives New Zealand will meet the cost of commissioning independent audits. We recommend that clause 33 be amended to clarify the timetable for audits.

Offences

Some submitters expressed concern that the penalties provided for in clause 62 are not adequate as a deterrent, nor do they reflect the seriousness of any wilful and negligent act. We agree that the current \$2,000 fine is not a sufficient deterrent and we recommend that clause 62 be amended to provide for a fine not exceeding \$5,000 in the case of an individual, and to a fine not exceeding \$10,000 in every other case.

National minority view

National is unable to support this bill as it adds unnecessary and substantial extra cost in compliance to all affected parties.

Questions raised in submissions from State enterprises and universities in regard to these costs were unresolved.

Appendix

Committee process

The Public Records Bill was referred to the committee on 16 September 2004. The closing date for submissions was 5 November 2004. We received and considered 46 submissions from interested groups and individuals. We heard 15 submissions. Hearing of evidence took 4 hours and 57 minutes and consideration took a further 3 hours and 30 minutes. We received advice from Archives New Zealand.

Committee membership

Dianne Yates (Chairperson)

Shane Ardern (Deputy Chairperson)

Steve Chadwick

Hon David Cunliffe

Lindsay Tisch

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<u>Subject to this Act,>

Words inserted by a majority

Hon Marian Hobbs

Public Records Bill

Government Bill

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

Subpart 1—Purpose and other preliminary provisions

- 3 Purposes of Act** 5
- 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 10
 - (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 15
 - (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 20
 - (d) to enhance public confidence in the integrity of public records and local authority records; and
- New (majority)**
- (da) 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 25
- (e) 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 30
 - (f) 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 35
 - (g) to support the safekeeping of private records.

4 Interpretation

In this Act, unless the context otherwise requires,—

New (majority)

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

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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: 10
- (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** 15 20

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 department of State called Archives New Zealand (Te Rua Mahara o te Kāwanatanga) and the national repository, both of which are continued by **section 9** 25

Chief Archivist means the Chief Archivist referred to in **section 10** 30

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 35

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
- 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
- estray record**—

Struck out (majority)

- (a) means—
- (i) a public record (other than a public archive) that is no longer under the control of the controlling public office:
 - (ii) a public archive that is no longer under the control of the Chief Archivist; but

New (majority)

- (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 5
- 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 10
- (b) includes—
- (i) a protected record; and
 - (ii) a local authority record that the controlling local authority resolves is worth permanent preservation 15
- 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 20
- Minister** means the Minister of the Crown 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 25
- 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 30
 - (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— 35

Struck out (majority)

(i) that is no longer in current use, or has been in existence for at least 25 years (whether or not it is in current use); and

(ii) that is classified as an open access record under **section 46(2)**; and

(iii) 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 2 of the State Sector Act 1988; 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 2(1) of the Public Finance Act 1989 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 5
- (ix) the New Zealand Defence Force; and
- (x) the New Zealand Security Intelligence Service; 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 10

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 15
- (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 20
 - (ii) stray records; but

Struck out (majority)

- (c) does not include a special collection

New (majority)

- (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 25

- 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,— 30
- (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— 5

- (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 10

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 15
- (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 2 of the Statistics Act 1975 20

New (majority)

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. 25

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: 30
 - (ii) a record or class of records is a public record for the purposes of this Act: 35

- (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: 5
 - (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): 10
 - (b) any regulations made under this Act:
 - (c) any standards. 15
- (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)**. 20
- (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 25
 - (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 30
 - (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 35
 - (b) in each case, have regard to advice received from the Archives Council. 40

- (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 5
 - (b) have regard to advice received from the Archives Council.
- 6 Exclusions from application of Act** 10
- 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; 15
 - (b) voting documents and specified materials received by Registrars of District Courts under section 89(2) of the Local Electoral Act 2001.
- 7 Treaty of Waitangi (Te Tiriti o Waitangi)** 20
- 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 25
 - (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 30
 - (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 35
 - (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

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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).

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Struck out (majority)

- (2) The department of State called Archives New Zealand (Te Rua Mahara o te Kāwanatanga) is continued.

New (majority)

- (2) The department of State known as Archives New Zealand is continued under the name Archives New Zealand (Te Rua Mahara o te Kāwanatanga).

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Chief Archivist

10 Chief Archivist

- (1) There is an office of the Chief Archivist.
- (2) The Chief Archivist is also the chief executive of Archives New Zealand.
- (3) The person holding office as the Chief Archivist immediately before the commencement of this Act continues to hold that office on the commencement of this Act on the same terms and conditions.

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11 Functions and duties of Chief Archivist

- (1) The functions of the Chief Archivist, in achieving the purposes of this Act, are—

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- (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 5
 - (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 10
 - (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 15
 - (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 20
 - (c) in relation to public archives,—
 - (i) to control and administer public archives; and
 - (ii) to ensure the preservation of public archives; and 25
 - (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 ~~authorise~~ control the disposal of those records; and 30
 - (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 35
 - (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 40
 - (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 5
 - (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. 10 15
- (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** 20
- In relation to the disposal of public records under **section 20(1)**, the Chief Archivist—
- (a) must act independently in the performance of his or her functions; and
 - (b) is not subject to directions from the Minister.
- 13 Delegations by Chief Archivist** 25
- (1) The Chief Archivist may, either generally or particularly, delegate <to an employee of Archives New Zealand> all or any of the Chief Archivist's functions, duties, or powers under this Act except—
- (a) the power to authorise the disposal of— 30
 - (i) public records; or
 - (ii) protected records; and
 - (b) the power to delegate.
- (2) A delegation— 35
- (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. 5
- (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.

Archives Council 10

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,— 15
- (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. 20
- (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 25
- (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 30
- (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. 35

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:** 10
 - (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 Archives New Zealand conducted under **section 34:** 15
 - (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. 20
- (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. 25

16 Administrative matters

- (1) The Archives Council may regulate its own procedure.
- (2) Archives New Zealand 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,— 30
- (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. 35

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 *<their>* *<its>* affairs, in accordance with normal, prudent business practice, including the records of any matter that is contracted out to an independent contractor. 5
- (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. 10
- (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. 15
- 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. 20
- (2) **Subsection (1)** does not apply if the disposal of a public record or a protected record is required by or under another Act. 25

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 30
- (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— 35
- (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 5
 - (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 at Archives New Zealand. 10

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— 15
- (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 20
 - (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— 25
- (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. 30
- (3) The Chief Archivist must not, without the Minister's written authorisation, dispose of a public record created or received by Archives New Zealand (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 of Archives New Zealand. 35

*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— 5
- (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— 10
- (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— 15
 - (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 20
 - (c) the transfer of the public records is to be deferred under **section 22**.

*Deferral of transfer***22 Deferred transfer of public records** 25

- (1) The requirement to transfer public records under **section 21(1)** does not apply—
- (a) to public records that are individual schedules provided to the Statistician under Part III of the Statistics Act 1975; or 30
 - (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 35
 - (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 40

- (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 5
 - (ii) the transfer of the public record may be deferred for a specified period.
- (2) In **subsection (1)(a)**, **schedule** has the meaning given to it in section 2 of the Statistics Act 1975.
- (3) In the case of public records referred to in **subsection (1)(a)**, the records— 10
- (a) must be transferred to the control of the Chief Archivist and the possession of Archives New Zealand after a period of 100 years from the day appointed by the Governor-General by Proclamation under section 23(2) of the Statistics Act 1975; and 15
 - (b) are subject to **sections 37D and 37DA** of the Statistics Act 1975; and
 - (c) are not subject to **Part 3**.
- (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. 20
- (5) An instruction issued under **subsection (1)(c)**— 25
- (a) must identify the public records to which the instruction relates; and
 - (b) must direct Archives New Zealand 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 30
 - (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. 35
- (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 40

- (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. 10
- (8) Every transfer deferred under this section must be noted in the register of deferred transfers, in accordance with **section 19(1)(a)**.
- 23 Transfer of public records** 15
- (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; 20
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. 25
- (3) **Subsection (1)** applies, with the necessary modifications, to local authority records. 30
- 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— 35
- (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** 5
- (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 10
 - (c) the release of the public record is consistent with the principles of the Privacy Act 1993; and
 - (d) the public record is not subject to a request under the Official Information Act 1982; and 15
 - (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 of Archives New Zealand, the Archives Council, a member of the Archives Council, or an employee of the controlling public office. 20
- (2) The Chief Archivist may authorise in writing the discharge of a class of public records that contains information about identified persons only if— 25
- (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 30
 - (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 35
 - (e) the discharge of the class of records is consistent with the principles of the Privacy Act 1993.
- (3) A public record that is discharged— 40

- (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)**. 5

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,— 10
- (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. 15
- (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: 20
 - (c) impose standards or conditions on, or issue instructions to, an approved repository for the purpose of ensuring that— 25
 - (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: 30
 - (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— 35
- (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 5
- (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. 10
- (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. 15
- (3) The Chief Archivist must ensure that every standard issued under this section is published in a manner that the Chief Archivist considers appropriate. 20

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: 25
- (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: 30
- (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>. 35

- (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 5
- (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>. 10

Struck out (majority)

- (3) This section applies, with the necessary modifications, to local authority records and local authority archives.

New (majority)

- (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. 15

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. 20
- (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**. 25

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— 30

- (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. 5
- (2) This report may be included in the annual report given to the Minister under section 30(1) of the State Sector Act 1988.
- (3) The Minister must present the report of the Chief Archivist to the House of Representatives.

Struck out (majority)

33 Chief Archivist must commission independent audits 10

- (1) The Chief Archivist must commission an independent audit of recordkeeping practices in every public office.
- (2) An audit commissioned under **subsection (1)** must—
- (a) cover the aspects of recordkeeping practices specified for the purpose of the audit by the Chief Archivist; and 15
- (b) be based on criteria developed by the Chief Archivist.
- (3) An audit must be conducted under **subsection (1)**—
- (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 20 years after the date of the previous audit.
- (4) It is not necessary to conduct an audit of all public offices in the same year.

New (majority)

33 Independent audits of public offices 25

- (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— 30
- (a) cover the aspects of recordkeeping practices specified for the purpose of the audit by the Chief Archivist; and

New (majority)

- (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). 5

34 Audit of Archives New Zealand

- (1) The Minister must commission an independent audit of Archives New Zealand—
- (a) as soon as is reasonably practicable after the date that is 5 years from the commencement of this Act; and 10
- (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 15
- (b) be based on criteria specified by the Minister on the advice of the Archives Council.

35 Audit reports

- As soon as is reasonably practicable after the end of the financial year in which an audit has been conducted— 20
- (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. 25

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

Estray records

- 36 Inspection of estray records** 30
- (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. 5

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: 10
- (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: 15

New (majority)

- | |
|---|
| <p>(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.</p> |
|---|

- (2) A person who receives a notice must comply with that notice. 20

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. 25
- (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 30
- (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. 35

- (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: 5
 - (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 10
 - (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)**. 15
- (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 20
 - (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: 25
- (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. 30

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. 35
- (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 *<it>* *<the administrative head of the local authority>* has—
- (a) given written notice to the Chief Archivist of *<its>* *<his or her>* intention to dispose of the protected record; and
 - (b) identified the protected record concerned; and
 - (c) specified how *<it>* *<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 65(b)** (which repeals Part XVII 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. 5
- (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)**— 10
- (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 15
- (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: 20
- (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. 25
- (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. 30
- (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** 5
- (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 10
- (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** 15
- (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 20
- (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. 25
- (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,— 30
- (a) determine whether it is necessary—
- (i) to restrict public access to the public record for a specified period of time; or 35
- (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. 5
- (6) Archives New Zealand 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)**. 10
- (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 1993. 15

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— 20
- (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**. 25

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— 30
- (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. 35
- (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 public office 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,— 5
- (a) determine whether it is necessary— 10
- (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. 15
- (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. 20
- (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)**. 25
- (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.

Open access records

- 47 Public inspection of open access records** 30
- 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. 35

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.

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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.

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(2) A prohibition on public access must be noted in the public access register, in accordance with **section 19(1)(d)**.

15

(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.

20

*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—

25

- (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.

30

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— 5
- (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; 10
- (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**. 15
- (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. 20
- 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. 25
- (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. 30
- 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 35
- (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,— 5
- (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: 10
 - (c) in the case of an appeal under **section 51(1)(b)**, the public office must continue to maintain and control its electronic records: 15
 - (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)**,— 20
- (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. 25

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 30
- (b) provide copies of all relevant documentation received from the controlling public office to—
 - (i) the Archives Council; and
 - (ii) the Chief Archivist. 35

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. 5
- 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— 10
 - (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— 15
 - (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 20
 - (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 25
- 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. 30
- 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. 35

- (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): 10
 - (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 (d)** as to be likely to mislead a person. 15
- (2) No person other than Archives New Zealand 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 20
 - (b) under a name that so resembles a name specified in that subsection as to be likely to mislead a person.

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. 30

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 ~~⟨\$2,000⟩~~ ⟨\$5,000⟩: 35
 - (b) in every other case, to a fine not exceeding ~~⟨\$5,000⟩~~ ⟨\$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

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63 Regulations

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: 10
- (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: 15
- (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: 20
- (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.

Savings and transitional provisions

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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. 30
- (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 35
- (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— 5
- (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. 10
- (4) However, **section 42(1)(d)** overrides **subsection (3)**.
- 65 Transitional provisions** 15
- (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— 20
- (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(2)(a)(iii)** of this Act: 25
- (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— 30
- (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: 35
- (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)**: 5
- (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)**. 10
- (3) **Subsection (2)(h)** applies to conditions imposed under— 15
- (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: 20
- (c) section 16(7) of the Archives Act 1957.

Repeals and amendments

66 Repeals

The following enactments are repealed: 25

- (a) the Archives Act 1957:
- (b) Part XVII 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. 30
- (2) The regulations specified in **Part 3 of the Schedule** are amended in the manner indicated in that Part.

Schedule Enactments amended

s 67

Part 1 Consequential amendments to Acts

- Adoption (Intercountry) Act 1997** (1997 No 109) 5
Omit from section 13(1) the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.
- Archives, Culture, and Heritage Reform Act 2000**
(2000 No 32)
Repeal so much of the Schedule as relates to the Archives Act 1957. 10
- Births, Deaths, and Marriages Registration Act 1995**
(1995 No 16)
Omit from the definition of **Chief Archivist** in section 2 the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”. 15
- Copyright Act 1994** (1994 No 143)
Repeal the definition of **National Archives** in section 2(1).
Insert in section 2(1), in its appropriate alphabetical order:
 “**Archives New Zealand** has the same meaning as in **section 4**
 of the Public Records Act **2004**”. 20
Repeal paragraph (a)(i) of the definition of **archive** in section 50(1) and substitute:
 “(i) Archives New Zealand (Te Rua Mahara o te Kāwanatanga); or”.
Repeal paragraph (b) of the definition of **archive** in section 50(1) and substitute: 25
 “(b) includes, in relation only to its holding of public archives (within the meaning of **section 4** of the Public Records Act **2004**), an approved repository within the meaning of that section of that Act.”. 30
Omit from section 85(3)(b) the words “the National Archives” and substitute the words “Archives New Zealand (Te Rua Mahara o te Kāwanatanga)”.
Omit from section 187(2)(b) the words “the National Archives” and substitute the words “Archives New Zealand (Te Rua Mahara o te Kāwanatanga)”. 35
Repeal so much of the Second Schedule as relates to the Archives Act 1957.

Part 1—continued

Crown Research Institutes Act 1992 (1992 No 47)

Omit from the heading to section 45 the expression “**Archives Act 1957**” and substitute the expression “**Public Records Act 2004**”.

Omit from section 45 the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.

5

Omit from section 45 the words “Government office” and substitute the words “public office”.

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

Repeal so much of the Second Schedule as relates to the Archives Act 1957.

10

Education Act 1989 (1989 No 80)

Repeal section 143(3).

Electronic Transactions Act 2002 (2002 No 35)

Omit from section 25(2) the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.

15

Energy Efficiency and Conservation Act 2000 (2000 No 14)

Omit from the heading above clause 35 of the Schedule the expression “*Archives Act 1957*” and substitute the expression “*Public Records Act 2004*”.

Omit from the heading to clause 35 of the Schedule the expression “**Archives Act 1957**” and substitute the expression “**Public Records Act 2004**”.

20

Omit from clause 35 of the Schedule the words “Government office” and substitute the words “public office”.

Families Commission Act 2003 (2003 No 128)

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Repeal section 60 and the heading above that section and substitute:

*“Application of Public Records Act **2004***

“60 **Public Records Act 2004 to apply**

The Commission is a public office for the purposes of the Public Records Act **2004**.”

30

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

Repeal so much of the Fourth Schedule as relates to the Archives Act 1957.

Gambling Act 2003 (2003 No 51)

Repeal section 233(d) and substitute:

35

“(d) the Public Records Act **2004**.”

Part 1—*continued***Housing Corporation Act 1974** (1974 No 19)

Repeal clause 45(2) of Schedule 1A and substitute:

“(2) Every subsidiary of the Corporation is a public office for the purposes of the Public Records Act **2004**.”

Income Tax Act 1994 (1994 No 164)

5

Repeal so much of Schedule 20 as relates to the Archives Act 1957.

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

Omit from sections 9(4)(a) and 10(3)(b) the expression “Archives Act 1957” and substitute in each case the expression “Public Records Act **2004**”.

10

Repeal section 11(4) and substitute:

“(4) Subsection (2) does not limit **section 26** of the Public Records Act **2004**.”

Omit from paragraph (d)(i) of the definition of **public document** in section 29(1) the words “section 2 of the Archives Act 1957” and substitute the words “**section 4** of the Public Records Act **2004**”.

15

New Zealand Public Health and Disability Act 2000

(2000 No 91)

Repeal clause 49 of Schedule 3 and the heading above that clause and substitute:

20

*“Public Records Act **2004** to apply*

“49 **Public Records Act 2004** to apply

The Public Records Act **2004** applies to information held by DHBs that is of a kind specified by regulations made under this Act.”

25

Repeal clause 33 of Schedule 6 and the heading above that clause and substitute:

*“Public Records Act **2004** to apply*

“33 **Public Records Act 2004** to apply

An organisation (other than NZBS) is a public office for the purposes of the Public Records Act **2004**.”

30

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

Omit from section 4(c) the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.

35

Repeal section 83 and the heading above that section and substitute:

Part 1—*continued*

New Zealand Trade and Enterprise Act 2003 (2003 No 27)—
continued

“Application of Public Records Act 2004

“83 **Public Records Act 2004 to apply**

NZTE is a public office for the purposes of the Public Records Act 2004.”

Ombudsmen Act 1975 (1975 No 9)

Insert in Part 1 of Schedule 1, in its appropriate alphabetical order: 5

Archives New Zealand (Te Rua Mahara o te Kāwanatanga)

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

Omit from section 5(4) the expression “Archives Act 1957” and substitute the expression “Public Records Act 2004”.

Public Trust Act 2001 (2001 No 100)

10

Repeal so much of Schedule 2 as relates to the Archives Act 1957.

State Sector Act 1988 (1988 No 20)

Omit from the First Schedule the item “Archives New Zealand.” and substitute the item “Archives New Zealand (Te Rua Mahara o te Kāwanatanga)”.

15

Statistics Act 1975 (1975 No 1)

Insert in section 2, in its appropriate alphabetical order:

“**public record** has the meaning given to it in **section 4** of the Public Records Act 2004”.

Insert in section 21, after subsection (2):

20

“(2A) An employee of Archives New Zealand who has access to public records that are subject to the restriction of section 37(2), must, if required to do so by the Statistician, make a similar declaration of secrecy, whether or not that person has made a declaration of secrecy under any other Act.”

25

Repeal section 37D and substitute:

“37D **Disclosure of historical documents**

Despite section 37, the Statistician may authorise the disclosure, after 100 years, of individual schedules (whether provided under Part III or otherwise) that the Statistician has classified as historical documents, after having regard to the advice of the Chief Archivist.

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Part 1—*continued***Statistics Act 1975** (1975 No 1)—*continued***“37DA Disclosure of individual schedules for statistical purposes**

- “(1) Despite sections 37 and 37C, on and from the date of the transfer under **section 22(3)(a)** of the Public Records Act **2004** of individual schedules provided to the Statistician under Part III, the Statistician must authorise, solely for statistical purposes, the disclosure of those individual schedules. 5
- “(2) An individual schedule must not be disclosed under this section unless—
- “*(a)* every person involved in the statistical project makes a statutory declaration similar to the declaration of secrecy prescribed by section 21; and 10
- “*(b)* the Statistician is satisfied that the security of the individual schedules and any information contained in them will not be impaired. 15
- “*(3)* The published results of a statistical project referred to in **subsection (2)** must not divulge more information than the Statistician could publish under this Part.”

Part 2

Related amendments to Acts 20

New (majority)**Police Complaints Authority Act 1988** (1988 No 2)

Add to section 32:

- “*(4)* Subsection (1) applies to a person employed by Archives New Zealand (Te Rua Mahara o te Kāwanatanga) or by or in a repository approved under **section 26** of the Public Records Act **2004**, and who has access to public records in respect of which the Authority is subject to an obligation of secrecy under this section.” 25

Tax Administration Act 1994 (1994 No 166)

Add to section 87(5)(d) the word “; or”.

Add to section 87(5) *<the following paragraph>*:

- “*(e)* being a person employed by Archives New Zealand (Te Rua Mahara o te Kāwanatanga) or by or in a repository 30

Part 2—*continued***Tax Administration Act 1994** (1994 No 166)—*continued*

approved under **section 26** of the Public Records Act **2004**, has access to public records in respect of which the Department is subject to an obligation of secrecy under section 81.”

Part 3

Consequential amendments to regulations

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

Omit from regulation 58(3) the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.

10

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

Revoke regulation 5A(1)(b) and substitute:

“(b) Archives New Zealand (Te Rua Mahara o te Kāwanatanga):”.

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

15

Omit from regulation 4(1) the expression “Archives Act 1957” and substitute the expression “Public Records Act **2004**”.

Revoke regulation 4(2) and substitute:

“(2) For the purposes of the application of the Public Records Act **2004**,—

20

“(a) information referred to in subclause (1)(a) must be regarded as public records (as defined in **section 4** of the Public Records Act **2004**); and

“(b) information referred to in subclause (1)(b) must be regarded as public archives (as defined in **section 4** of the Public Records Act **2004**).”

25

Revoke regulations 5(2) and 6.

Part 3—*continued*

New (majority)

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

Revoke regulations 4 to 6 and substitute:

- “4 **Information that must be regarded as public records or public archives**
- “(1) The Public Records Act **2004** applies to—
- “(a) information that has been officially made or received—
- “(i) by a DHB in the conduct of its affairs; or 10
- “(ii) by an employee of a DHB in the course of his or her official duties; and
- “(b) health information, as defined in **subclause (3)**, if it is made or received as provided for in **subclause (1)(a)**.
- “(2) For the purposes of the application of the Public Records Act **2004**, information referred to in **subclause (1)** must be regarded as public records (as defined in **section 4** of the Public Records Act **2004**). 15
- “(3) In this regulation, **health information** means, in relation to an identifiable individual, information— 20
- “(a) about the health of that individual, including that individual’s medical history:
- “(b) about any disabilities that individual has, or has had:
- “(c) about any services that are being provided, or have been provided, to that individual: 25
- “(d) provided by that individual in connection with the donation, by that individual, of any body part, or any bodily substance, of that individual.”

Legislative history

1 September 2004	Introduction (Bill 189–1)
16 September 2004	First reading and referral to Government Administration Committee