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CHAPTER 216

ARCHIVES

Act 13 of 1992
Act 2 of 2010

ARRANGEMENT OF SECTIONS

PART 1 – PRELIMINARY
1. Interpretation
2. Application

PART 2 – ADMINISTRATION
3. Declaration of office for the purpose of this Act
4. National Archives
5. Archivist
6. Delegation of the Archivist's powers

PART 3 – CUSTODY AND PRESERVATION OF ARCHIVES
7. Deposit of public archives in the National Archives
8. Deposit of public archives of less than fifteen years of age
9. Public records and archives not in the National Archives
10. Return of public archives to State Office
11. Public archives and records to be surrendered on demand
12. Public archives not to be destroyed or disposed of without authority of Archivist
13. Destruction of routine public archives
14. Access of public to National Archives
15. Publication of public archives
16. Copyright

PART 4 – MISCELLANEOUS PROVISIONS
17. National Archives seal
18. Certified copies
19. Directions, etc.
20. Offences and penalties
21. Regulations
22. Repeal and savings
23. Transfer of powers

ARCHIVES

An Act to provide for the continuity of the National Archives and to provide for the custody and preservation of the public archives of Vanuatu and for matters connected therewith.

PART 1 – PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires–

"Archivist" means the Archivist appoints under section 5 of this Act;

"National Archives" means the National Archives of Vanuatu established under section 4 of this Act;

"public archives" means all public records that have ceased to be in current use in the State Office in which they were originally made or received or in the State Office in whose custody they have been placed or that have been deposited in the National Achieves;

"public records" means all papers, documents, or records of any kind whatsoever officially made or received by any State Office in the conduct of its affairs or by any employee or officer of the State or any Constitutional Entity or Statutory Entity in the course of his official duties; and without limiting the generality of the foregoing provisions of this definition, include registers, books, maps, plans, drawings, photographs, cinematography films, and sound recordings so made or received; and also includes copies in public record.

"State Office" means any place at which the affairs of the State or any Constitutional Entity or Statutory Entity are or have been conducted or otherwise declared to be a State Office under section 3.

2. Application

Nothing in this act shall apply with respect to any public archives which has been drawn up, acquired or used by any State Office if such archives discloses any information which is required to be kept secret under any law in force in Vanuatu.

PART 2 – ADMINISTRATION

3. Declaration of office for the purpose of this Act

The Minister, acting in accordance with the advice of the Council of Ministers, may declare any office, corporation or body to be a "State Office" for the purpose of this Act.

4. National Archives

(1) There shall continue to be a national institution to be known as the National Archives, which shall be the same national institution as that established under the Vanuatu National Cultural Council Act [Cap. 186] and existing under the same name on the date of coming into force of this Act.

(2) Public archives of Vanuatu which are considered worth permanent preservation, shall in the manner prescribed by this Act, be deposited and preserved in the National Archives.

(3) Subject to any general or special directions which may be given to him by the Minister, the Archivist may by contract or bequest or in any like manner acquire for the National Archives all such original records, manuscripts and other documentary materials, or copies or replicas thereof, other than public archives as he thinks necessary or

desirable to secure and all such materials shall be deemed to be public archives of Vanuatu for the purposes of this Act.

(4) For the purposes of this Act the National Archives shall be deemed to have been established under this section with effect from the date of coming into force of the Act.

5. Archivist

There shall be appointed a public servant to be known as the Archivist who shall, subject to any direction given to him by the Minister, in respect of the public archives of Vanuatu be charged with the care, custody, control and administration of the public archives in the National Archives and the public access to the National Archives and with the performance of any other duties prescribed by this Act.

6. Delegation of the Archivist's powers

(1) The Archivist may from time to time delegate in writing any of his powers under this Act except the power of authorizing the destruction or disposal of public archives, to any public servant.

(2) Subject to any general or special directions given or conditions attached by the Archivist, the public servant to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by a delegation.

Provided that no such delegation shall prevent the exercise of any power so delegated by the Archivist.

(3) Every public servant purporting to act pursuant to any delegation under this section shall, in absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(4) Every delegation under this section shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Archivist by whom it was made may have ceased to hold office, and shall continue to have effect as if made by his successor in office.

PART 3 – CUSTODY AND PRESERVATION OF ARCHIVES

7. Deposit of public archives in the National Archives

(1) All public archives of the age of fifteen years or over (other than those which under any Act are required to be held in the custody of a specified person or State Office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as –

(a) evidence of the organization, functions and transactions of the State Office in which they were originally made or received; or

(b) evidence of public or private personal or property rights or civic rights; or

(c) containing historical or general information,

shall be transferred to the custody of the Archivist and be deposited in the National Archives.

(2) Notwithstanding subsection (1) –

(a) where the Archivist is satisfied that the deposit in the National Archives of any particular public archives of the age of fifteen years or over would unduly prejudice the effective administration of any State Office, he shall defer the deposit of that public archives for such period as may be agreed upon between the Archivist and the head of the State Office affected;

(b) where the head of the State Office having the possession or control of any public archives satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that archives in the National Archives, the Archivist shall from time to time defer the deposit of that pubic archives for such period as may be agreed upon between that head of the State Office and the Archivist;

(c) where the Minister in charge of any State Office certifies that in his opinion any specified archives or specified class of public archives in the custody or control of the State Office contains information the release of which may adversely affect the security of Vanuatu or relations between the Government of Vanuatu and the government of any other country, the deposit in the National Archives of that public archives or of public archives of that class shall be deferred for such period or shall be made subject to such conditions as to access or otherwise as that Minister from time to time directs;

(d) where the deposit of any public archives in the National Archives is deferred under paragraphs (a), (b) or (c), the Archivist may impose any conditions he thinks fit to ensure the safe preservation of any such archives during the time they are kept in a State Office.

(3) Any public archives deposited under subsection (2) may be deposited unconditionally or, if the head of the State Office making the deposit so requires, shall be deposited subject to such conditions as to access and otherwise as may be agreed upon from time to time by the Archivist and the head of that State Office.

(4) Where the head of any State Office and the Archivist are unable to agree as to whether or not the deposit of any public archives in the National Archives should be deferred or as to the period for which that deposit should be deferred or as to the conditions as to access and otherwise on which any public archives should be so deposited, that question shall be determined by the Minister acting in accordance with the advice of the Council of Ministers, and his decision shall be final.

8. Deposit of public archives of less than fifteen years of age

(1) The Archivist may allow the deposit in the National Archives of public archives of less than fifteen years of age if he considers that they are of sufficient value of deposit.

(2) Any deposit of public archives under subsection (1) may be subject to any special conditions imposed by the head of the State Office making the deposit.

9. Public records and archives not in the National Archives

(1) The Archivist may from time to time inspect any public records or public archives that are for the time being in the possession or under the control of any State Office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as he considers necessary.

(2) Nothing in this section shall be deemed to authorize the Archivist to inspect the contents of any public records or public archives –

(a) which by any written law are forbidden to be communicated to him; or

(b) which are secret or confidential, except with the consent of the head of the State Office having the custody of any such public records or public archives.

10. Return of public archives to State Office

Where the head of the State Office by which any public archives was deposited in the National Archives or the head of the successor of that State Office satisfies the Archivist that the public archives is required for use in that State Office, the Archivist shall return the public archives to the custody of that State Office for such period as may be agreed upon between the Archivist and the head of that State Office, and subject to such conditions as the Archivist may impose

to ensure the safe custody and preservation of that public archives during the time it is kept in that State Office.

11. Public archives and records to be surrendered on demand

Where any public archives or public record (being an archives or a record that is the property of the Government) is in the custody or possession of any person other than a State Office, a public officer or other person authorized to have such custody or possession in his official capacity (whether it came into his possession before or after the commencement of this Act), and the original of that public archives or public record is not in the possession of any State Office or deposited in the National Archives, that person shall, on demand writing by the Archivist, deposit that public archives or public record in the National Archives.

12. Public archives not to be destroyed or disposed of without authority of Archivist

(1) No person shall destroy or otherwise dispose of, or authorize the destruction or other disposal of, any public archives of any kind whatsoever that are in his possession or under his control, except with the consent of the Archivist given in accordance with the provisions of this Act.

(2) Before authorizing the destruction of any public archives or any class of public archives, the Archivist may, if he thinks fit, consult with any person whom the Archivist considers qualified to advise him as to the value of any such public archives for permanent preservation.

13. Destruction of routine public archives

The Archivist may authorize the immediate destruction, or the destruction after the expiration of such specified time as may be agreed upon between the Archivist and the head of the State Office concerned, of any specified classes of public archives that:

(a) by reason of their number, kind or routine nature do not in his opinion possess any enduring value for preservation in the National Archives as public archives; and

(b) are not required for reference purposes in any State Office after action on them is completed, or after the expiration of such period of years from the date on which action on them is completed as may be agreed upon between the Archivist and the head of the State Office concerned.

14. Access of public to National Archives

(1) Subject to –

(a) any written law providing for any information or records to be kept secret;

(b) any conditions under which any archives are deposited;

(c) any orders or regulations made under this Act,

all archives deposited in the National Archives shall be available for public reference:

Provided that –

(a) the Archivist may, for any good cause, withhold access to any specified class of public archives in his custody subject to the right of the person so denied access to appeal to the Minister, whose decision thereon shall be final;

(b) any public archives deposited in the National Archives by any court and containing any information relating to the trial or punishment of any particular person may be inspected only by a person authorized in writing by the Chief Justice or by any other person authorized by the Chief Justice in that behalf.

(2) Nothing in this section shall limit the powers of any competent court to order the production of any public archives of Vanuatu.

(3) Notwithstanding the other provisions of this section and subject to the provisions of paragraph (b) of subsection (1), the Minister may at any time, by order in writing addressed to the Archivist, withhold access either generally or by any person or class of persons to any specified public archives or to any specified class of public archives in the custody of the Archivist.

(4) Any person may, with the consent of the Archivist, make or cause to be made at his own expense copies of or extracts from any public archives which are available for public reference under this section.

15. Publication of public archives

On the recommendation of the Archivist, the Minister may authorize the publication of any public archives deposited in the National Archives and available for public reference which he considers to be of sufficient interest to warrant their publication.

16. Copyright

(1) Nothing in this Act shall derogate from any provision of the law relating to copyright in relation to anything contained in any public archives deposited in the National Archives under the provisions of this Act.

(2) Where any person publishes any work containing any passage from any public archives deposited in the National Archives, he shall in that publication acknowledge the source from which that passage is taken.

PART 4 – MISCELLANEOUS

17. National Archives Seal

The Archivist shall cause to be made a seal for the National Archives, with which all certified copies issuing out of the National Archives shall be sealed.

18. Certified copies

Any copy of any public archives of Vanuatu in the custody of the Archivist which is certified by the Archivist to be a true copy of such public archives shall be received as evidence of the contents of such record in all courts of law within Vanuatu

19. Directions, etc.

Any arrangement, directions, consent or conditions made, given or imposed under this Act shall be in writing.

20. Offences and penalties

(1) Any person who –

(a) willfully or negligently damages any public archives; or

(b) willfully or negligently disposes any pubic archives otherwise than in accordance with the provisions of this Act; or

(c) contravenes or fails to comply with any provisions of this Act.

commits an offence and shall be liable on conviction to a fine exceeding VT 100,000.

(2) Where any person is convicted of an offence under subsection (1), the court convicting such person may, in addition to any penalty imposed for the offence, order that that person shall not be entitled to have access to the National Archives for such period as the court thinks fit.

21. Regulations

(1) The Minister may make regulations not inconsistent with this Act for the better carrying into effect the provisions of this Act and may prescribe in such regulations all matters which are necessary or required to be prescribed under this Act.

(2) Without prejudice to the generality of subsection (1) the Minister may in such regulations provide for all or any of the following matters –

(a) to regulate the transfer of public archives from any State Office to the National Archives or any record center or other repository which may be established for the purposes of this Act;

(b) to regulate the manner of destruction or other disposal of valueless public archives;

(c) to regulate the admission of the public to the national Archives and the use by the public of public archives of Vanuatu deposited in the National Archives;

(d) to provide for the custody and preservation of public archives deposited in the national Archives under section 4(2) of this Act, and prescribing the fees (if any) to be charged for their custody and preservation.

22. Repeal and savings

(1) *(Omitted)*

(2) Any public records acquired, maintained, protected and preserved in the National Archives under the Vanuatu National Cultural Council Act [Cap. 186], for the purposes of this Act, shall be deemed to have been acquired, maintained, protected and preserved in accordance with this Act.

(3) Any arrangements, directions or conditions made, given or imposed under the Vanuatu National Cultural Council Act [Cap. 186] as is in force on the date of operation of this Act shall remain in force until the expiry of the period of validity of that arrangement, direction or condition.

(4) Any regulation made under the Vanuatu National Cultural Council Act [Cap. 186] as is in force on the date of operation of this Act relating to the acquisition, maintenance, custody, protection or preservation of public records in so far as such regulation is not inconsistent with this Act, shall be deemed to be a regulation made under this Act and may be amended by regulations made under this Act.

23. Transfer of powers

The powers, duties and functions of the Vanuatu National Cultural Council in respect of the preservation, protection, custody, acquisition, maintenance and use by the public of public archives in the National Archives shall, on the commencement of this Act vest in the Archivist.

Table of Amendments

1	*Amended by Act 2 of 2010*	*9(2)(b)*	*Amended by Act 2 of 2020*
2	*Amended by Act 2 of 2010*	*10*	*Amended by Act 2 of 2010*
3	*Amended by Act 2 of 2010*	*11*	*Amended by Act 2 of 2010*
7(1)	*Amended by Act 2 of 2010*	*13*	*Amended by Act 2 of 2010*
7(1)(a)	*Amended by Act 2 of 2010*	*13(b)*	*Amended by Act 2 of 2010*
7(2)(a) – (d)	*Amended by Act 2 of 2010*	*22(1)*	*Consequential amendments to Cap. 186 are omitted as spent, per Cap. 295.*
7(3) & (4)	*Amended by Act 2 of 2010*		
8(2)	*Amended by Act 2 of 2010*		
9(1)	*Amended by Act 2 of 2010*	*21(2)(a)*	*Amended by Act 2 of 2010*