

LIBRARY BOARD OF WESTERN AUSTRALIA.

No. 29 of 1974.

AN ACT to amend the Library Board of Western Australia Act, 1951-1965, to provide for the custody and management of the State archives and for other purposes.

[Assented to 29th October, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Library Board of Western Australia Act Amendment Act, 1974.*

Short title
and citation.

(2) In this Act the Library Board of Western Australia Act, 1951-1965, is referred to as the principal Act.

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Acts, as
amended by
Act No. 113
of 1965.

(3) The principal Act as amended by this Act may be cited as the Library Board of Western Australia Act, 1951-1974.

Section 3
amended.

2. Section 3 of the principal Act is amended—

- (a) by inserting after the section designation “3.” the subsection designation “(1)”;
- (b) by deleting the interpretations of the expressions “ex officio member”, “local authority”, “Local Government Act”, “Municipal Corporations Act”, “Road Districts Act”, and “State Library”;
- (c) as to the interpretation of the expression “nominee member”, by deleting the passage “subsections (3) or” in line three and line four of that interpretation, and substituting the passage “subsection (3) and subsection”; and
- (d) by inserting in their appropriate alphabetical order the following new interpretations—

“local authority” means the council of a municipality constituted pursuant to the provisions of the Local Government Act, 1960;

“non-current public record” means any public record that has ceased to be in current use in the public office in which it was originally made or received, or in the public office in whose custody it has been placed after being so made or received;

“public office” means—

- (a) any department, branch or office of the Government of Western Australia;

- (b) any public body, corporate or incorporate, constituted pursuant to a statute of Western Australia;
- (c) any council of a municipality or other body constituted pursuant to the Local Government Act, 1960, or any Act amended or replaced by that Act; or
- (d) any other local governing body corporate or incorporate;

“public record” means—

- (a) any record made or received by a public officer in the course of his duties;
- (b) any record made or received by a court or person acting judicially in Western Australia; and
- (c) any copy of any public record as defined by this Act;

but does not include—

- (d) any record which is lawfully owned by a person or body other than the Crown or a public office; or
- (e) any book or other document, except a public record, which forms part of the stock of a library for the use of the users of that library;

“record” includes any document, book, plan, paper, parchment or other material or part thereof on which is any writing or printing or which is marked with any letters or marks denoting words or any other signs

capable of carrying a definite meaning to persons conversant with them, photographs, and any other device by means of which information is recorded or stored;

“State archive” means a non-current public record which has been selected for preservation under the provisions of this Act; and

“State Reference Library” means The State Reference Library of Western Australia, known prior to the coming into operation—

(a) of the Acts Amendment (Libraries) Act, 1955, as the Public Library of Western Australia; and

(b) of the Library Board of Western Australia Act Amendment Act, 1974, as The State Library of Western Australia. ;

and

(e) by adding a new subsection as follows—

(2) Where a public office has been abolished, or the relevant functions of that office have been transferred to another office, the expression “public office” in this Act shall include the public office at the time exercising the functions of the former public office, but if no public office at the time exercises the function of the former public office the Board shall refer to the Premier any matter upon which this Act requires the Board to consult with the public office which transferred to the Board any public record or State archive. .

Heading
inserted.

3. The principal Act is amended by inserting, immediately after section 3 a new heading as follows—

General provisions. .

4. Section 5 of the principal Act is amended— Section 5
amended.

- (a) by deleting subsection (1a);
- (b) by deleting the word “thirteen”, in line one of subsection (2), and substituting the word “twelve”;
- (c) by deleting subsection (3) and substituting a new subsection as follows—

(3) Of the members of the Board, one shall be the person for the time being holding or acting in the office of Director-General of Education and the remaining eleven shall be appointed by the Governor, of whom—

- (a) five shall be nominated by the Minister; and
 - (b) each of the other six shall be selected by the Minister, in the manner provided by subsection (4) of this section, to represent the body by which the member was nominated. ;
- (d) by deleting subsection (4) and substituting a new subsection as follows—

(4) Each of the bodies named in this subsection has the right to submit to the Minister a panel of the names of three persons from whom the Minister shall select one to be the member of the Board representing that body, that is to say—

- (a) the Library Association of Australia, Western Australian Branch;
- (b) Perth City Council;
- (c) Fremantle City Council;

Board to represent the Crown.

24. In relation to any public record—

- (a) no length of time shall bar the rights of the Crown; and
- (b) the Board shall be deemed to represent the Crown,

notwithstanding the provisions of any other law to the contrary.

Transitional provision.

25. All State archives in the custody of the Board at the coming into operation of the Library Board of Western Australia Act Amendment Act, 1974, shall be deemed to have been transferred to the Board under the provisions of this Act and shall remain in the custody of the Board.

Archives may remain in, or be called for by, a public office.

26. (1) The Board may enter into an agreement under the provisions of this Act with a public office for any or all of the State archives of that public office to remain in the custody of that public office.

(2) If an officer in charge of any public office notifies the Board in writing that any archive which was transferred to the Board from that public office is required for use in that public office, the Board shall, if the Board has the custody and control of that archive, make that archive available to that officer.

Validity of records in Archives.

27. The legal validity of a public record shall not be affected by its transfer as a State archive to the Board under the provisions of this Act.

Public access.

28. Subject to the provisions of this Act, the Board shall provide public access to the State archives, together with appropriate assistance and facilities to enable the archives to be effectively used for administrative requirements and for study and research.

29. It shall be the duty of the Board—

Functions of
the Board.

- (a) to advise and assist public offices in matters of record management, including the creation, maintenance, security and disposal of records;
- (b) to select for preservation non-current records notified to the Board by public offices;
- (c) to accept custody and control of public records so selected, and to take all reasonable steps to secure their preservation; and
- (d) to organise and arrange the State archives in a proper manner for use,

and the Board shall have all such powers as may be reasonably necessary for the carrying out of that duty.

30. (1) The officer in charge of a public office—

Records
management.

- (a) shall be responsible, with the advice and assistance of the officers of the Board, for the maintenance within that office of a system of records management; and
- (b) shall take all action necessary for the recovery of any public records unlawfully removed from that office.

(2) The officer in charge of a public office may destroy or dispose of any public record or class of public records in the custody or under the control of that public office—

- (a) if the destruction or disposal is in accordance with a Retention and Disposal Schedule with the terms of which an authorised officer of the Board has concurred; or
- (b) if the Board has informed that officer in writing that it does not require that public record or that class of public

records to be transferred to the Board for inclusion among the State archives,

but not otherwise.

(3) Before any public records are destroyed or disposed of, the officer in charge of the public office in the custody or under the control of which the public records are shall notify the Board of the intention to destroy or dispose of those public records and in that notification shall specify the nature of the public records concerned.

(4) If within three months after a notification under subsection (3) of this section has been given to the Board, the Board does not in accordance with section 31 of this Act inform the officer who caused the notification to be given that it requires the public records referred to in the notification to be transferred, this section shall not thereafter apply to the destruction or disposal of the records referred to in the notification.

(5) Public records in the custody, or under the control, of a public office shall not be destroyed or disposed of otherwise than in accordance with this Act.

(6) Notwithstanding the provisions of any other law, any officer having the control or custody of any non-current public records may notify the Board of those records, specifying the nature of the records, and request that the records be inspected with a view to the transfer of those records to the Board as State archives.

Transfer
to Board

31. (1) Where the Board is notified by the officer having the control or custody of any non-current public records that he intends to destroy or dispose of those records or that he desires that those records should be transferred to the Board as State archives the Board shall inspect those records or cause them to be inspected.

(2) Where the Board selects and requires any such public record to be transferred to the custody of the Board as State archives, the Board shall so inform the officer who caused the notification to be given to the Board and thereupon those public records shall be transferred to the Board as soon as practicable and in the same form and order as that in which those records were maintained in the public office from which they were transferred.

(3) Where the Board is unable to accept custody at that time of any public record selected and required as State archives under this section, the officer in charge of the public office in the custody of which that record is shall comply with the requests of the Board concerning the care and security of that public record until so transferred.

32. (1) Notwithstanding any other Act or law, whether coming into operation before or after the coming into operation of this provision of this Act, which prohibits any person from disclosing or divulging any information contained in a public record the provisions of this Act apply to that public record, and no person shall be liable to a penalty under any such other Act or law by virtue of anything done pursuant to this Act. Secrecy.

(2) When an officer in charge of any public office transfers to the Board any public record which contains information the disclosure of which is prohibited by any other Act or law, he shall by notice in writing inform the Board of that prohibition.

(3) When an officer in charge of any public office transfers to the Board any public record the disclosure of which is not prohibited by any other Act or law but the disclosure of which would not be in the public interest he may, by notice in writing given to the Board, impose reasonable restrictions on public access to that public record or any part of that record, but any such conditions may be varied or revoked,

either in general or in a particular case, by the officer for the time being in charge of the public office from which that public record was transferred.

(4) The Board and any officer of the Board shall comply with a restriction imposed in accordance with the provisions of subsection (3) of this section.

(5) If the Board, or an authorised officer of the Board, is of the opinion that any archives or class of archives transferred from a public office contain matters of such private or personal nature that they should not be open for general public consultation, the Board or an officer of the Board may—

(a) restrict access to those archives to any extent which the Board or the authorised officer sees fit; or

(b) grant access subject to conditions, and any person to whom access is granted shall observe such restrictions or conditions.

Destruction
of archives.

33. (1) If the Board, for any reason, is of the opinion that a State archive or a class of archives in the custody of the Board should no longer be preserved, the Board may, after consultation with the officer in charge of the public office from which that archive or class of archives was transferred, recommend to the Governor that the archive be destroyed.

(2) Subject to the approval of the Governor being given pursuant to subsection (1) of this section, the Board may destroy any State archive in the custody of the Board.

(3) A certificate that a State archive has been destroyed by the Board shall be *prima facie* evidence of the fact so certified, if authenticated by the signature of the Chairman or an authorised officer.