

PART 2

ADMINISTRATION

4 Archives Office

(1) There shall continue to be established an Archives Office to be known as the “National Archives of Niue” wherein shall be stored for better preservation such of the public records of Niue as are transferred to or acquired by the Archives Office under this Act.

(2) Subject to any general or special directions which may be given by Cabinet, the Archivist may by contract or bequest or in any like manner acquire for the Archives Office all such original records, manuscripts and other documentary materials, or copies, or replicas of it, other than public records, as the Archivist may deem necessary or desirable to secure, and all such materials shall be deemed to be public records of Niue for the purposes of this Act.

5 Archivist

There shall be appointed as a member of the Public Service an Archivist who shall, subject to any directions given to the Archivist by Cabinet, be charged with the care, custody, control and administration of the public records in the Archives Office and the public access to it and with the performance of any other duties prescribed by this Act.

6 Delegation of the Archivist’s powers

(1) The Archivist may delegate in writing to any person or class of persons any of his powers under this Act, except the power of authorising the destruction or disposal of public records.

(2) (a) Subject to any general or special directions given or conditions attached by the Archivist, the person 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 such person directly by this section and not by delegation.

(b) No such delegation shall prevent the exercise of any power by the Archivist.

(3) Every person purporting to act pursuant to any delegation shall, in the absence of proof to the contrary, be presumed to be acting under the terms of the delegation.

(4) Every delegation under this section shall, until it is revoked, continue in force under 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 records

(1) All public records of the age of 15 years or over (other than those which under any Act are required to be held in the custody of a special person or Government office) which in the opinion of the Archivist are of sufficient value to warrant their preservation as –

- (a) Evidence of the organisation, functions, and transactions of the Government 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 Archives Office.

Archives Act

(2) Notwithstanding subsection (1) –

- (a) Where the Archivist is satisfied that the deposit in the Archives Office of any particular public record of the age of 15 years or over would unduly prejudice the effective administration of any Government office, the Archivist shall defer the deposit of that public record for such period as may be agreed upon between the Archivist and the administrative head of the Government office affected;
- (b) Where the administrative head of the Government office having the possession or control of any public record satisfies the Archivist that by reason of its secret or confidential nature it would not be in the public interest immediately to deposit that record in the Archives Office, the Archivist shall defer the deposit of that public record for such period as may be agreed upon between that administrative head and the Archivist;
- (c) Where the Minister in charge of any Government office certifies that in his opinion any specified public record or specified class of public records in the custody or control of the Government office contains information the release of which may adversely affect the security of Niue or relations between the Government of Niue and the Government of any other country, the deposit in the Archives Office of that public record or of public records 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 directs;
- (d) Where the deposit of any public record in the Archives Office is deferred as aforesaid, the Archivist may prescribe any conditions the Archivist thinks fit to ensure the safe preservation of any such record during the time they are kept in a Government office.

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

(4) Where the administrative head of any Government office and the Archivist are unable to agree as to whether or not the deposit of any records in the Archives Office 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 records should be deposited, that question shall be determined by Cabinet, whose decision shall be final.

8 Records of less than 15 years

(1) The Archivist may allow the deposit in the Archives Office of public records of less than 15 years of age if the Archivist considers that they are of sufficient value for deposit.

(2) Any deposit of public records under subsection (1) may be subject to any special conditions imposed by the administrative head of the Government office making the deposit.

9 Records not in the Archives Office

(1) The Archivist shall be entitled to inspect any public records that are for the time being in the possession or under the control of any Government office and give such instructions as to their safe preservation and such advice as to their efficient and economical administration and management as the Archivist considers necessary.

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

- (a) Which by law are forbidden to be communicated to the Archivist; or
- (b) Which are secret or confidential;

except with the consent of the administrative head of the Government office having the custody of it.

10 Return of public records

Where the administrative head of the Government office by which any public record was deposited in the Archives, or the administrative head of the successor of that Government office, satisfies the Archivist that the public record is required for use in that Government office, the Archivist shall return such public record to the custody of that Government office for such period as may be agreed upon between the Archivist and the administrative head, and subject to such conditions as the Archivist may prescribe to ensure the safe custody and preservation of that public record during the time it is kept in that Government office.

11 Public records to be surrendered

Where any public record is in the custody or possession of any person other than a public officer or other person authorised to have such custody or possession in his official capacity, that person shall, on demand in writing by the Archivist, deposit that public record in the Archives Office or such other Government office as the Archivist may direct.

12 Public records not to be destroyed

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

(2) Before authorising the destruction of any public record or any class of it, the Archivist may consult with any person whom the Archivist considers qualified to give advice as to the value of permanent preservation.

13 Routine destruction of public records

The Archivist may authorise the immediate destruction, or the destruction after the expiration of such specified time as may be agreed upon between the Archivist and the administrative head of the Government office concerned, or any specified public record or class of public records that –

- (a) By reason of their number, kind or routine nature do not possess any enduring value for preservation in the Archives Office; and
- (b) Are not required for reference purposes in any Government 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 administrative head of the Government office concerned.

14 Access to public records

(1) Except as may be otherwise provided by enactment, and subject to the conditions under which any records are deposited, all records deposited in the Archives Office shall be available for public reference:

Provided that –

- (a) The Archivist may, for any good cause, withhold access to any specified public record or any specified class of public records in his custody subject to the right of the person so denied access to appeal to Cabinet, whose decision on it shall be final;

(b) Any public record deposited in the Archives Office by any court and containing any information relating to the trial or punishment of any particular person, may be inspected only by a person authorised 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 record of Niue.

(3) Notwithstanding the other provisions of this section and subject to subsection (1) (b), Cabinet may, by causing written notice to be given to the Archivist, withhold access either generally or by any person or class of persons to any specified public record or to any specified class of public records 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 extras from any public archives which are available for public reference under this section.

15 Publication of public records

On the recommendation of the Archivist, Cabinet may authorise the publication of any public records deposited in the Archives Office and available for public reference which Cabinet 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 records deposited in the Archives Office.

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

16A Deposit of Niue documents concerning tāoga Niue

(1) A person who makes a document publicly available must provide 2 copies of the document to the Archivist for deposit in the Archives office –

- (a) within 4 weeks after making the document publicly available; and
- (b) free of charge.

(2) A person who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

(3) This section applies despite anything in any copyright legislation or in any other intellectual property right or law.

(4) In this section –

“document”

- (a) means a document that –
 - (i) is printed in Niue, or whose author or publisher is resident in Niue; and
 - (ii) concerns or refers to tāoga Niue; and
- (b) includes –
 - (i) books; and
 - (ii) serials; and
 - (iii) pamphlets; and
 - (iv) sheets of letter press or music; and
 - (v) plans, maps, charts, or tables; and
 - (vi) audio visual materials; and
 - (vii) documents that are in microform or digital form; and
 - (viii) any part of a document; and
 - (ix) each edition of a document;

“publicly available” includes issuing a document –

- (a) in hard copy format; or
- (b) in electronic format, whether online or offline;

“tāoga Niue” has the same meaning as in section 3(1) of the Tāoga Niue Act 2012.

PART 4

MISCELLANEOUS PROVISIONS

17 Archives Office seal

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

18 Certified copies

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

19 Regulations

(1) Subject to subsection (3), Cabinet may make regulations for any purpose for which regulations are contemplated by this Act and all such other regulations as may in Cabinet’s opinion be necessary or expedient for giving effect to this Act and for the due administration of it.

(2) Without limiting the generality of subsection (1), Cabinet may make regulations –

- (a) Regulating the transfer of public records from any Government office to the Archives Office or any record centre or other repository which may be established for the purposes of this Act;
- (b) Regulating the manner of destruction or other disposal of valueless public records;
- (c) Regulating the admission of the public to the Archives Office and the use by the public of public records of Niue deposited in the Archives Office, and the fees to be charged for such admission;
- (d) Providing for the custody and preservation of records deposited in the Archives Office under section 4 (2) and prescribing the fees to be charged for that custody and preservation.

(3) The Chief Justice may make rules of court with regard to matters referred to in subsection (1) (a), (b) or (c) in cases where the public documents concerned relate to proceedings in any court.

20 Offences and penalties

(1) Every person shall commit an offence who –

- (a) Wilfully or negligently damages any public records; or
- (b) Wilfully or negligently disposes of or destroys any public records otherwise than under this Act; or
- (c) Does any act in contravention of or fails to comply with this Act.

(2) Every person who commits an offence against this Act shall be liable on conviction to a fine not exceeding 10 penalty units.

(3) The court by which any person is convicted of an offence against subsection (1) may, in addition to any penalty imposed for the offence, direct that such person shall not be entitled to have access to the Archives Office for such period as the court thinks fit.