

BILL NO. 9 OF 2006

A BILL

FOR AN ACT TO AMEND THE PUBLIC RECORDS ACT

ENACTED by the Parliament of the Fiji Islands:

Part 1: PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Public Records (Amendment) Act 2006, and comes into force on a date appointed by the Minister by notice in the Gazette.

(2) In this Act, the Public Records Act (Cap. 108) is referred to as the "principal Act".

Section 2 amended

2. The principal Act is amended in section 2:

(a) by adding the following definition:

" "archive" means any public records that have ceased to be in current use and are required to be permanently preserved because of their evidential or informational value;"

(b) in the definition of "Government office" by deleting everything after "and includes" and substituting "a statutory body declared under section 19A;"

(c) by repealing the definition of "public records" and substituting the following:

" "public record" means any document or record of any kind, form, nature or description officially made or received by and which has been kept or required to be kept by a Government office and includes:

(a) sound recording, electronic documents, digital records, computer records, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work; or

(b) any document or record which has been kept or required to be kept by a body declared under section 19A;"

Section 5 amended

3. The principal Act is amended by repealing section 5 and substituting the following:

"Appointments and functions of Archivist

5. (1) The Government Archivist appointed by the Public Service Commission in accordance with section 147 of the Constitution shall carry out the functions under this Act.

(2) The functions of the Archivist are:

- (a) to take care, control and manage public records kept in the Archive office;
- (b) to provide public access to public records regarded as archive kept in the Archive office;
- (c) to ensure care, control and management of public records regarded as archive kept in a Government office;
- (d) to perform other functions imposed on him under this Act or any other written law."

New section added

4. The principal Act is amended by adding the following section:

"National Archive Advisory Council

6A. (1) This section establishes the National Archive Advisory Council, consisting of the following members:

- (a) a chairperson; and
- (b) four other members,
- (c) appointed by the Minister.

(2) The functions of the Advisory Council are:

- (a) to advise the Minister on any matter relating to the regulation, operation and administration of this Act;
- (b) to advise the Minister on any matter referred to it by the Minister;
- (c) to perform any other function conferred upon it by this Act or any other written law."

Section 9 amended

5. The principal Act is amended in section 9 by adding the following subsections:

"(3) A body declared under section 19A shall take care, control and manage any public record or archive in its custody and control, in accordance with the regulations.

(4) Any archive kept by or in custody or control of a Government office shall be deemed to be in the care, control and management of the Archivist and shall be subject to the provisions of this Act."

Section 10 amended

6. The principal Act is amended in section 10 by renumbering the existing provision as subsection (1) and by adding the following subsections:

"(2) Where a Government office requests the Archivist to return any of its public record or archive kept by the Archivist, the chief executive officer of that Government office shall ensure that the public record or archive is returned to the Archivist as soon as possible after use.

(3) If the chief executive officer of a Government office fails, within a reasonable time, to return the public record or archive upon request by the Archivist to do so, the Archivist may enter and search the Government office for the public record or archive and retrieve the public record or archive.

(4) A person who deliberately obstructs or, upon request, refuses to assist the Archivist in searching for the public record or archive commits an offence and is liable on conviction to a fine not exceeding \$5,000."

Section 19 amended

7. Section 19 of the principal Act is amended by substituting the full stop with a semi-colon at the end of paragraph (d) and by adding the following paragraph:

"(e) regulating the administration of public records and archive not currently deposited in the National Archive."

New section added

8. The principal Act is amended by adding the following section:

"Prescribed body

19A. The Minister may, by order in the Gazette, declare any statutory body be subject to this Act in respect of documents or archive kept by it."

Section 20 amended

9. The principal Act is amended in section 20:

(a) in paragraph (a) of subsection (1), by inserting "negligently loses or" at the beginning of that paragraph;

(b) in subsection (2), by deleting "two hundred dollars" and substituting "\$5,000".

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June 2006

PUBLIC RECORDS (AMENDMENT) BILL 2006

----- EXPLANATORY NOTE

[This note is not part of the Bill and is only intended to indicate its general effect]

1.0 INTRODUCTION

1.1 The Bill seeks to amend the Public Records Act to strengthen and widen its provisions in respect of maintaining and safeguarding public records and their archival.

1.2 Regulating record-keeping of public records has three distinct advantages:

- (a) records are a key component of accountability;
- (b) facilitates and supports good management;
- (c) as a valuable historical source.

1.3 The amendments seek to achieve the following:

- (a) electronic record-keeping;
- (b) simplify access and disposal;
- (c) widen its scope to cover government agencies that have been corporatized;
- (d) strengthen enforcement provisions.

2.0 CLAUSES

Clause 1 provides for the short title and commencement provisions.

Clause 2 amends and adds definitions for the purpose of the principal Act. The amendment will now clearly distinguish "archival materials" and "public records". Definition of public records have now been extended to cover public records stored in a computer.

Clause 3 amends section 5 to comply with the appointment of public officers under the Constitution and expand that section to clearly set out the functions of the Government Archivist.

Clause 4 adds a new section to establish the National Archive Advisory Council consisting of 5 members to be responsible for giving policy advise to the Minister on matters relating to the principal Act.

Clause 5 adds new subsections to section 9 to allow other bodies to be prescribed by regulations to take care, control and manage public records in their possession in accordance with regulations. Any archive material that is still in possession of a Government department will be deemed to be in the care, control and management of the Archivist.

Clause 6 adds 3 new subsections to ensure that the Chief Executive Officers are responsible for the return of public records or archival material requested from Archivist. It empowers the Archivist to enter those departments and retrieve those records. Creates offences for those who obstruct the Archivist.

Clause 7 adds new paragraph to allow the Archivist to ensure that public records or archival materials not in their possession are properly kept wherever they are stored.

Clause 8 adds a new section to empower the Minister to declare a statutory body to be covered under the Act.

Clause 9 amends section 20 to add a new offence of "negligently loses" a public record or archive material. It also increases the penalties from the current \$200 to \$5,000.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Bill comes under the responsibility of the Minister for Information and Communications.

Q.B. Bale
Attorney General
and Minister for Justice