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Dated 22 March 2022



TASMANIA

ARCHIVES ACT 1983

No. 76 of 1983

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SCHEDULE 1 – SAVINGS AND TRANSITIONAL PROVISIONS



ARCHIVES ACT 1983

No. 76 of 1983

An Act to provide for the custody of State and other records and to repeal the provisions of the *Archives Act 1965*

[Royal Assent 11 January 1984]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows: :

PART I – PRELIMINARY

1. Short title

This Act may be cited as the *Archives Act 1983*.

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2. Commencement

- (1) This section and section 1 shall commence on the day on which this Act receives the Royal Assent.
- (2) Except as provided in subsection (1), this Act shall commence on such day as may be fixed by proclamation.

3. Interpretation

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires –

Archives Office means the Archives Office of Tasmania and any branch of that office and includes any premises at which State archives are deposited or stored;

commencement day means the day fixed under section 2(2);

Court means the Supreme Court and includes a judge of that Court;

Crown record means a record –

- (a) made for the use, or any purpose, of the Crown; or
- (b) in the case of a record not so made, kept by an officer or employee of the Crown for any public purpose in accordance with a duty or responsibility

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imposed, or a power or authority conferred, by or under an Act;

Government department means –

- (a) a department of the State Service established under the *State Service Act 2000*; or
- (b) a department or service of the State that does not form part of the State Service –

and includes any department which would be a department referred to in paragraph (a), or would be a department or service referred to in paragraph (b), but for the fact that it has ceased to exist, or has been merged with or superseded by some other body;

local authority means any –

- (a) council; or
- (b) body corporate established by or under an Act or in the exercise of prerogative rights of the Crown and having jurisdiction limited to a district, locality or part of the State;

public State record means a register or other State record kept in accordance with a duty or responsibility imposed, or a power or authority conferred, by or under an Act, for the information of the public

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and available under that Act for public inspection;

record means a document or an object that is, or has been, made or kept by reason of any information or matter that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance, or thing;

relevant authority means –

- (a) in relation to a Government department that is established under the *State Service Act 2000* – the Head of that department;
- (b) in relation to a department or service of the State that does not form part of the State Service – the person who is directly responsible to the Minister concerned for the administration and direction of that department or service;
- (c) in relation to a State authority or a local authority that is incorporated – that authority; or
- (d) in relation to a State authority or a local authority that is unincorporated – the secretary, clerk, or other principal executive officer of that authority;

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the repealed Acts means the *Archives Act 1965* and, where appropriate, the *Public Records Act 1943*;

the regulations means regulations made and in force under this Act;

State archive means any State record or any other record which is for the time being deposited and preserved in the Archives Office;

State authority means a body, an authority, a royal commission or a board of inquiry, that is not a Government department or a local authority, whether that body, authority, royal commission or board is incorporated or not, and that is established or constituted by or under an Act or in the exercise of prerogative rights of the Crown where –

- (a) that body, authority, royal commission or board, or its governing authority, wholly or partly comprises a person appointed by the Governor, a Minister or another State authority; or
- (b) the Crown has a controlling interest, or is a major shareholder, in that body, authority, royal commission or board;

State record means –

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- (a) a Crown record; or
- (b) a record of a State authority; or
- (c) a record of a local authority; or
- (d) any other record that was at any time a record mentioned in paragraph (a), (b) or (c) –

but does not include a record of the Parliament of Tasmania.

- (1A) A reference in this Act to a department or service of the State that does not form part of the State Service is a reference to –
 - (a) the Police Service; and
 - (b)
 - (c) any other department or service of the State prescribed by the regulations for the purposes of this paragraph.
- (2) In this Act, a reference to Tasmania includes a reference to Van Diemen’s Land and any island which was, at the relevant time, governed as a dependency of Tasmania or Van Diemen’s Land.
- (3) In this Act, a reference to an officer of a Government department includes a reference to the Minister responsible for administering that department and a reference to an officer of a State authority or a local authority includes a reference to a member of the governing or managing board, council, or committee of that authority.

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- (4)
- (5) Without limiting the generality of the definition of the expression *record* in subsection (1) –
- (a) the reference to a document in that definition includes a reference to any printed or written material; and
 - (b) the reference to an object in that definition includes a reference to a sound recording, coded storage device, magnetic tape or disc, microfilm, photograph, film, map, plan, or model or painting or other pictorial or graphic work.
- (6) For the purposes of this Act, records shall be regarded as being deposited in the Archives Office notwithstanding that they may have been lent or temporarily removed from that office or are kept in the custody of a person in accordance with arrangements made under section 8(4).

4. Act to bind Crown in right of Tasmania

This Act binds the Crown in right of Tasmania.

5. Act not to apply to certain records

This Act does not apply to or in relation to –

- (a) records of any department, instrumentality, or agency of the Commonwealth;

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- (b) records that have passed to the Commonwealth under section 85 of the Australian Constitution; or
- (c) records of a class prescribed in the regulations for the purposes of this section, except any such records which are deposited in the Archives Office in accordance with an agreement or an arrangement made with the Commonwealth or a Commonwealth Authority, agency, or instrumentality (whether before, on, or after the commencement day).

PART II – ARCHIVES OFFICE

Division 1 – Continuance of office, &c.

6. Continuance of Archives Office

There shall continue to be an office and repository in Tasmania to be known as the “Archives Office of Tasmania” in which such State records as are made available to the State Archivist and are considered by him to be worthy of preservation shall be deposited and preserved as State archives.

7. Appointment of State Archivist, &c.

- (1) The Minister administering the *State Service Act 2000* is to appoint a State Service officer or State Service employee employed under that Act to be State Archivist and that officer or employee is to hold that office in conjunction with State Service employment.
- (2) Subject to and in accordance with the *State Service Act 2000*, there shall be employed such persons as are considered necessary for the purposes of this Act.

Division 2 – Functions, &c., of State Archivist, &c.

8. Responsibilities and powers of State Archivist

- (1) The State Archivist is responsible for –
 - (a) the care of the State archives; and

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- (b) taking all practicable steps for the preservation of the State archives; and
 - (c) making and authenticating copies of materials or parts of materials kept in the State archives required as evidence in legal proceedings or for other purposes; and
 - (d) performing such other duties as are prescribed by or under this Act; and
 - (e) making and issuing guidelines in respect of any matter relating to the making and the keeping of State records.
- (2) The State Archivist has power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of his or her functions and, in particular, has power to do the following:
- (a) provide facilities for access to the State archives;
 - (ab) provide systems, including indexes and guides, to enhance the accessibility of the State archives;
 - (b) prepare publications concerning the activities of, and facilities provided by, the Archives Office and the State Archivist;
 - (c) arrange for the publication, on such terms and conditions as the State Archivist or the Minister thinks fit, of any of the State

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- archives or of any article prepared from records in the State archives;
- (d) accept responsibility for the safe keeping of documents and objects which are not State records;
 - (e) make arrangements for the separate housing of films and other objects which have to be kept under special conditions;
 - (f) lend State archives for display at exhibitions and for other special purposes;
 - (g) acquire records by purchase, gift, or bequest or on loan.
- (3) The State Archivist may include in State archives records held or acquired by him otherwise than under this Act or by the Tasmanian Library Board or any other person under the repealed Acts.
- (4) Subject to any other law in force in Tasmania, where the State Archivist considers it appropriate to do so, he may make arrangements with another person for records in his custody to be kept in the custody of that person.
- (5) Arrangements referred to in subsection (4) shall provide for the care of, and provision of access to, the records to which they relate and for the regular inspection of those records by the State Archivist or an officer or employee of the Archives Office.

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- (6) The State Archivist is responsible for providing for use in the Archives Office a seal bearing the armorial designs and supporters assigned for Tasmania surrounded by the words “Archives Office of Tasmania”.

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9. Power to accept gifts, &c.

- (1) The Minister, the Secretary of the Department, or the State Archivist may, for the purposes of this Act, accept or acquire on behalf of the State any real or personal property by gift *inter vivos* or *mortis causa* or by bequest or devise and may agree to any condition subject to which any such gift, bequest, or devise is made.
- (2) The rule of law known as the rule against perpetuities or the rule against remoteness of vesting does not apply to a condition referred to in subsection (1).
- (3)

PART III – RECORDS AND STATE ARCHIVES

Division 1 – Preservation and acquisition of State and other records

10. Preservation of State records

- (1) The relevant authority –
 - (a) is to keep proper records in respect of the business of the Government department, State authority or local authority for which the relevant authority is responsible; and
 - (b) is to cause all such records to be preserved and accessible until they are dealt with in accordance with this Act; and
 - (c) may, in the name of the Government department, State authority or local authority, take legal proceedings for the recovery of any such records if the relevant authority no longer has legal custody of them.
- (2) Where the State Archivist believes on reasonable grounds that any State records are being kept under control of a relevant authority, the State Archivist may –
 - (a) after giving not less than 2 days' notice to the authority, enter and inspect any place under the control of that authority or any place at which he believes on

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- reasonable grounds that any such records are being kept;
- (b) inspect any State records kept at any place entered pursuant to paragraph (a); and
 - (c) give advice in writing to the relevant authority with respect to the keeping of any State records under the control of the authority.
- (3) Any person who, without lawful justification or reasonable excuse, obstructs the State Archivist in the exercise of the powers conferred by subsection (2)(a) or (b) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.
 - (4) It is the duty of every relevant authority to whom or to which advice is given under subsection (2)(c) to take all reasonable steps to implement the advice.
 - (5) In subsections (2) and (3) a reference to the State Archivist includes a reference to any State Service officer or State Service employee who is for the time being acting with the authority of the State Archivist.

10A. State Archivist may issue guidelines

- (1) The State Archivist may, by written instrument, issue guidelines to a relevant authority in respect of any matter relating to the making and the keeping of State records.

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- (2) The State Archivist may, by written instrument, amend or revoke the guidelines.
- (3) It is the duty of the relevant authority to take all reasonable steps to ensure that the guidelines are complied with.

11. Transfer of State records to Archives Office

- (1) Subject to this Part, when a State record that is in the custody or possession of a Government department, a State authority, or a local authority, or an officer or employee of a Government department, State authority, or local authority has ceased, whether before, on, or after the commencement day, to be required to be readily available for the purposes of the Crown or, as the case may be, the State or local authority or, in the case of a record that is a public State record, to be readily available for public use or reference, the relevant authority shall, unless the record has been lawfully destroyed, cause it to be delivered to the State Archivist, in accordance with arrangements made or approved by him, for depositing in the Archives Office.
- (2) Subject to this Part, where a State record (not being a public state record) that is in the custody or possession of a Government department, a State authority, or a local authority, or an officer or employee of a Government department, a State authority, or a local authority, has been in existence as a State record for 25 years, the relevant authority shall, unless exempted in

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writing by the State Archivist cause the record to be delivered to the State Archivist as soon as it is practicable to do so for depositing in the Archives Office.

- (2A) If the State Archivist grants an exemption under subsection (2), the State Archivist may also require the relevant authority to meet any conditions that the State Archivist considers appropriate in respect of the management of, and the provision of access to, the State records that are the subject of the exemption.
- (3) A reference in this section to a Government department or to an officer or employee of a Government department does not include a reference to the Archives Office or to an employee employed in that Office.

12. Recovery of State records

- (1) Where the Minister believes on reasonable grounds that –
 - (a) a Crown record to which this section applies is in the custody or possession of a person otherwise than as an officer or employee of the Crown; or
 - (b) a State authority or local authority record to which this section applies is in the custody or possession of a person other than the relevant authority or a person acting under the supervision or direction of the relevant authority –

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the Minister may, by notice in writing given by certified mail, require that person to deliver that record to the Archives Office within such period as may be specified in the notice.

- (2) If a person to whom a notice is given under subsection (1) does not comply with the notice within the specified period, the Minister may make an application to the Court for an order directing the delivery to the Archives Office of the record that is specified in the notice.
- (3) No length of time shall bar the rights of the Crown in relation to an application under subsection (2).
- (4) On the hearing of an application under subsection (2), the Court may –
 - (a) make the order that is applied for;
 - (b) refuse the application; or
 - (c) order the Minister to deliver a statement of claim on which further proceedings shall be taken in the matter.
- (5) Where the Court makes an order under subsection (4), it may make such ancillary orders as it thinks appropriate.
- (6) The Minister has, in relation to an application under subsection (2) for the delivery to the Archives Office of a State authority or local authority record to which this section applies, all the rights to which the State authority or local

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authority concerned would be entitled to exercise in relation to that record.

(7) In this section –

- (a) a reference to a Crown record to which this section applies is a reference to a Crown record, other than a record already deposited in the Archives Office or a record the transfer or disposal of which has been authorized –
 - (i) under this Act or either of the repealed Acts; or
 - (ii) in the case of a transfer or disposal of a Crown record outside Tasmania – under an enactment of the Commonwealth, another State, a Territory of Australia, or a country or territory outside Australia corresponding to this Act or expressly by the Governor or a Minister of this State; and
- (b) a reference to a State authority or local authority record to which this section applies is a reference to such a record, other than a record already deposited in the Archives Office or record the transfer or disposal of which has been authorized under this Act or either of the repealed Acts.

13. Compensation

- (1) Where the State Archivist obtains possession of records by means of a notice given or proceedings taken under section 12, a prescribed person may make an application in writing to the Minister claiming compensation in respect of deprivation of those records, and, after determining the amount that appears to him to be fair and reasonable in the circumstances, the Minister may, with the approval of the Treasurer, pay that amount to that prescribed person.
- (1A) In determining if an amount is fair and reasonable for the purposes of subsection (1), the Minister may –
- (a) take into consideration any one or more of the following matters:
 - (i) the price usually paid by an archival institution, a library or any other public institution collector for similar records;
 - (ii) the condition of the State records;
 - (iii) the present or potential future value of the State records for research;
 - (iv) the importance of the State records, in the context of other records already held or sought by the State Archivist;

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- (v) the expenses incurred by the person who had possession or control of the State records immediately before the records came into the possession of the State Archivist; and
 - (b) obtain the opinion of a valuer, appointed under the *Income Tax Assessment Act 1997* of the Commonwealth, as to the likely value of the State records.
- (2) For the purposes of subsection (1), the following persons are prescribed persons:
 - (a) in the case of Crown records – the person who had custody or possession of the records immediately before they came into the possession of the State Archivist;
 - (b) in the case of records other than Crown records –
 - (i) the person who had custody or possession of the records immediately before they came into the possession of the State Archivist; or
 - (ii) if that person is not the owner of the records or the State authority or public authority whose records they were, the owner of the records.
- (3) If a person who has claimed compensation under subsection (1) is dissatisfied with the amount of

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compensation determined by the Minister, under that subsection, that person may apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination.

- (4) The Magistrates Court (Administrative Appeals Division) has jurisdiction to hear and determine an application under subsection (3) notwithstanding any other law to the contrary.
- (5)
- (6) In addition to its powers under the *Magistrates Court (Administrative Appeals Division) Act 2001*, the Magistrates Court (Administrative Appeals Division) may—
 - (a) determine the amount of compensation (if any) that it thinks should be paid to the applicant and make an order directing the Minister to pay to him the amount so determined; or
 - (b) make an order directing that the amount of compensation payable to the applicant be determined by arbitration under the *Commercial Arbitration Act 2011*.
- (7) An order referred to in subsection (6)(b) shall, for the purposes of applying the *Commercial Arbitration Act 2011* to the arbitration that is the subject of the order, be deemed to be a written agreement between the applicant under subsection (3) and the Minister to submit their differences to arbitration.

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- (8) Where a person who has made an application under this section for compensation in respect of records delivered by him or his predecessor in title to the Archives Office has made a payment for those records to a thief or receiver of stolen goods, either innocently or to preserve those records from harm, then, notwithstanding that he has no proprietary interest in those records, that person may be awarded compensation under this section in respect of the whole or such part of the amount of that payment as the Minister or, as the case may be, the Magistrates Court (Administrative Appeals Division) determines as being appropriate.

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14. Injunctions

- (1) The Court may, on the application of the Minister, the Secretary of the Department, or the State Archivist, grant an injunction –
- (a) requiring a person who has custody or possession of records that are sought by the State Archivist to refrain from dealing with those records except as authorized or directed by the Court; and
 - (b) if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing in relation to those records.
- (2) Where an application is made to the Court under subsection (1), the Court may, if in the opinion

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of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1)(a) pending determination of the application.

- (3) The Court may at any time rescind or vary an injunction granted under subsection (1) or (2).
- (4) Where an application under this section is made to the Court for the granting of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised –
 - (a) if the Court is satisfied that the person has engaged in conduct of that kind – whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind – whether or not the person has previously engaged in conduct of that kind and whether or not there is imminent danger of substantial damage being sustained if the person engages in conduct of that kind.
- (5) Where an application is made under this section for an injunction, the Court shall not require the applicant, as a condition of granting an interim

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injunction, to give any undertaking as to damages.

15. Conditions may be imposed on the making of State archives available for public inspection

- (1) Where a State record to which this subsection applies is deposited in the Archives Office, that record shall, unless the relevant authority otherwise directs or specifies in writing notified to the State Archivist, be deemed to be subject to a condition prohibiting the State Archivist from making the record available for inspection by members of the public.
- (2) Subsection (1) applies to the following State records:
 - (a) a record that has been submitted to the State Cabinet for its consideration or is or was proposed by a Minister to be so submitted;
 - (b) an official record of the State Cabinet;
 - (c) a copy of, or of a part of, a record referred to in paragraph (a) or (b);
 - (d) a record that has been submitted to the State Executive Council for its consideration or is proposed by a Minister to be so submitted;
 - (e) an official record of the State Executive Council;

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- (f) a copy of, or of part of, a record referred to in paragraph (d) or (e).
- (3) Subject to this section, where a relevant authority makes any State record available to the Archives Office, that authority may, by notice in writing given to the State Archivist –
- (a) inform the State Archivist that the record contains information or matter, the disclosure or divulging of which is prohibited by any enactment other than a provision of this Act; or
 - (b) in a case where the record contains information or matter of a kind specified in subsection (4) – impose such conditions as the authority considers to be appropriate –
 - (i) prohibiting the State Archivist from making the record available for inspection by members of the public; or
 - (ii) restricting the persons or the class of persons to whom or to which the State Archivist may make the record available for inspection.
- (4) The following kinds of information and matter are specified for the purposes of subsection (3)(b):
- (a) information or matter the disclosure of which would involve the disclosure of any deliberation or decision of the State

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Cabinet, not being information or matter contained in a record by which a decision of the State Cabinet was officially published;

- (b) information or matter the disclosure of which would involve the disclosure of any deliberation or advice of the State Executive Council, other than information or matter contained in a record by which an act of the Governor, acting with the advice of the Executive Council, was officially published;
- (c) information or matter the disclosure of which would involve the disclosure of –
 - (i) any opinion, advice, or recommendation given, obtained, prepared, or recorded; or
 - (ii) any consultation or deliberation that has taken place –

in the course of, or for the purposes of, bringing into existence a record of a kind to which subsection (1) applies;

- (d) information or matter communicated in confidence or on behalf of the Government of the Commonwealth or of another country or State or of a Territory of the Commonwealth or a person receiving the communication on behalf of any such Government, the disclosure of which would constitute a breach of that confidence;

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- (e) information or matter the disclosure of which would prejudice relations between this State and the Commonwealth or between this State and another State or a Territory of the Commonwealth;
- (f) information or matter the disclosure of which would have a substantial adverse effect on the financial or property interests of this State or of a State authority or a local authority;
- (g) information or matter the disclosure of which would be reasonably likely to have a substantial adverse effect on the interests of this State or of a State authority or a local authority in or in relation to pending or likely legal proceedings;
- (h) information or matter the disclosure of which would constitute a breach of confidence;
- (i) information or matter the disclosure of which would –
 - (i) prejudice the enforcement or proper administration of the law in a particular case;
 - (ii) prejudice the fair trial of a person or the impartial adjudication of a particular case;
 - (iii) contrary to the public interest, disclose, or enable a person to

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ascertain, the identity of a confidential source of information in relation to the enforcement or administration of the law;

- (j) information or matter the disclosure of which would involve the unreasonable disclosure of information relating to the personal affairs of a person, including a deceased person;
 - (k) information or matter, including commercial or financial information, the disclosure of which would be likely to expose unreasonably to disadvantage the material interests of an industrial or trading business or undertaking.
- (5) Where a person makes available to the Archives Office a record that is not a State record, that person may, by notice in writing given to the State Archivist, impose such conditions as he considers appropriate –
- (a) prohibiting the State Archivist from making the record available for inspection by members of the public indefinitely or for such period as may be specified in the notice;
 - (b) restricting indefinitely or during such a period the persons or the class of persons to whom or to which the State Archivist may make the record available for inspection; or

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- (c) stipulating that the record shall not become the property of the Crown in right of Tasmania as provided by section 17.
- (6) Any condition imposed under subsection (3)(b) or (5) in relation to a record may at any time be varied by the relevant authority or person concerned but not in such a way as to have retrospective effect or to impose any further prohibition or restriction in relation to the record, and a reference in this section to a condition shall be construed as including a condition that is varied under this subsection.
- (7) Where, at the expiration of 25 years from and including the date on which a State record came into existence, the record is a State archive which is subject to a condition by virtue of subsection (1), the record shall cease to be subject to the condition unless, at or before the time when the record was deposited in the Archives Office, a condition was imposed under subsection (3)(b) –
 - (a) prohibiting the record from being made available for inspection by members of the public after the expiration of that period of 25 years; or
 - (b) restricting after that period the persons or class of persons to whom or to which the State Archivist may make the record available for inspection.

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- (8) Where a State record contains information or matter the disclosure or divulging of which is prohibited by an enactment other than a provision of this Act, that enactment shall, unless it expressly provides for the prohibition to extend beyond 25 years after the date on which the record came into existence or purports to over-ride this subsection, cease to have effect at the expiration of that period of 25 years.
- (9) Where, at the expiration of 25 years from and including the date on which a record came into existence, the record is a State archive which is subject to a condition imposed under subsection (3)(b) or (5)(a) or (b), the record shall cease to be subject to the condition unless the contrary intention was expressed in writing at or before the time at which the record was received for deposit in the Archives Office.
- (10) Every condition imposed under subsection (3)(b) in respect of a State record shall, notwithstanding anything expressed in the condition to the contrary, cease to have effect after the expiration of 75 years from and including the date on which the record came into existence.

16. Certain persons prohibited from disclosing or divulging contents of certain records

- (1) Where a State archive is a record that is subject to a condition by virtue of section 15(1) or a condition imposed under section 15(3)(b), a person to whom this section applies shall not,

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except with the approval of the relevant authority –

- (a) disclose or divulge any information or matter contained in the record in contravention of the terms of the condition; or
- (b) make the record available for inspection in contravention of those terms.

Penalty: Fine not exceeding 10 penalty units.

(2) Where –

- (a) a State archive is a record that contains information or matter the disclosure or divulging of which is prohibited by an enactment other than a provision of this Act;
- (b) the State Archivist has been informed in accordance with section 15(3)(a) that the record contains that information or matter; and
- (c) the enactment referred to in paragraph (a) does not provide for it to be an offence for a person to whom this section applies to disclose or divulge that information or matter in contravention of that enactment

–
a person to whom this section applies shall not, while that enactment continues to have effect in relation to that record, disclose or divulge that

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information or matter or make that record available for inspection.

Penalty: Fine not exceeding 10 penalty units.

(3) Where a State archive is a record that is subject to a condition imposed under section 15(5)(a) or (b) and the person who imposed the condition is still alive or, where the person who imposed the condition is a body corporate, the body corporate is still in existence, a person to whom this section applies shall not, except with the approval of that person –

- (a) disclose or divulge any information or matter contained in the record in contravention of the terms of the condition; or
- (b) make the record available for inspection in contravention of those terms.

Penalty: Fine not exceeding 10 penalty units.

(4) This section applies to –

- (a) the State Archivist;
- (b) a former State Archivist or Principal Archivist;
- (c) a person employed in the Archives Office;
- (d)

- (e) a person formerly employed in the Archives Office, whether before, on, or after the commencement day; and
- (f) a person who is or who was employed in the department, whether before, on or after the commencement day.

16A. Conditions relating to Independent Review records

- (1) In this section –

Anti-Discrimination Commissioner means the Anti-Discrimination Commissioner appointed under section 5 of the *Anti-Discrimination Act 1998*;

came into existence, in relation to an Independent Review record, means the moment when the record or information became an Independent Review record;

Independent Review means the Independent Review of Parliamentary Workplace practices and procedures to support workplace culture conducted by the Anti-Discrimination Commissioner, appointed as the Independent Reviewer by the Premier on 27 July 2021;

Independent Review record means a record or information, that is given to, received by or brought into existence by –

- (a) the Independent Review; or

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(b) a person acting for, or on behalf of, the Independent Review –

for the purposes of the Independent Review;

relevant person means a person referred to in section 16(4).

- (2) Despite section 15, if an Independent Review record is deposited in the Archives Office, that record is subject to a condition that prohibits the State Archivist from making the record available for inspection by members of the public until 75 years after the record came into existence.
- (3) For the avoidance of doubt, subsection (2) –
- (a) applies to an Independent Review record whether the Independent Review commenced before or after this section commences; and
 - (b) applies only to an Independent Review record and not to any other iteration of the record, or information, that –
 - (i) forms all, or part of, the Independent Review record; and
 - (ii) is held for a purpose other than the Independent Review.
- (4) A relevant person must not –
- (a) disclose or divulge any information or matter contained in an Independent Review record while the record is subject

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to the condition specified in subsection (2); or

- (b) make the Independent Review record available for inspection in contravention of the condition.

Penalty: Fine not exceeding 10 penalty units.

17. Archives to become property of Crown in certain cases

A record that is not a Crown record shall become the property of the Crown in right of Tasmania –

- (a) if the record is a State record – at the expiration of 25 years from and including the date on which the record came into existence or the time at which it is deposited in the Archives Office, whichever is the later; or
- (b) if the record is not a State record –
 - (i) except as provided by subparagraph (ii) – at the time at which the record is deposited in the Archives Office; or
 - (ii) where the record is deposited in the Archives Office and is subject to a stipulation or agreement imposed or made at or before the time of deposit whereby the record is required to be returned to the person who delivered the

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record for deposit or to some other person or it is otherwise stipulated or agreed at or before that time, whether expressly or by necessary implication, that the property in the record is not to pass to the Crown – at the time at which the stipulation or agreement ceases to have effect (but only if the record is at that time still deposited in the Archives Office).

Division 2 – Access to and availability of State archives

18. Access to State archives

- (1) Subject to this section, the State Archivist shall cause to be made available for public access all State archives that are not subject to conditions by virtue of section 15(1) or imposed under section 15(3)(b) or (5)(a) or (b) and that are not records of a kind referred to in section 15(3)(a) or section 16A.
- (2) Where a State archive is required by subsection (1) to be made available for public access, any member of the public is, subject to this section, entitled to access to the archive in any one or more of the following forms:
 - (a) an opportunity to inspect the archive without charge;
 - (b) on payment of a fee determined in accordance with the regulations –

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- (i) in the case of an archive which is not a film or video, provision of a copy by way of sale; or
 - (ii) in the case of an archive which is a film or video, provision of a copy by way of sale, hire, lease or any other means determined by the State Archivist;
 - (c) in the case of an archive from which information or matter can be produced or made available in a particular form by means of a computer, projector, or other equipment, provision, on payment of a fee (if any) determined in accordance with the regulations, of access to that information or matter by the use of that equipment;
 - (d) in the case of an archive by which words are recorded in a manner in which they are capable of being reproduced in the form of sound or in which words are contained in the form of sound or in which words are contained in the form of shorthand writing or in codified form, an opportunity to take, in accordance with arrangements prescribed by the State Archivist, a recording or written transcript of the words recorded or contained in the archive.
- (2A) The State Archivist may make a copy of a film or video available to a person under subsection (2)(b)(ii) on any terms and subject to any

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conditions the State Archivist considers appropriate.

- (3) Where –
- (a) the giving of access under this section to an archive in a particular form other than the form referred to in subsection (2)(a) would interfere unreasonably with the operation of the Archives Office or of a Government department, a State authority, or a local authority that has custody of the archive;
 - (b) the giving of access under this section to an archive in a particular form would not, having regard to the physical nature of the archive, be appropriate;
 - (c) the giving of access under this section to an archive in a particular form would be detrimental to the preservation of the archive; or
 - (d) the giving of access under this section to an archive in a particular form would involve an infringement of copyright subsisting in the archive, other than copyright owned by the Crown in right of this State –

the State Archivist may decide that access to the archive is not to be provided in that form but is to be given in some other form.

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- (4) The State Archivist may, for the purpose of ensuring the safe custody and proper preservation of a State archive –
 - (a) determine reasonable conditions to which access to the archive is to be subject; or
 - (b) determine that the archive is to be withheld from public access.
- (5) Where an archive is withheld in accordance with subsection (4), the State Archivist shall make a copy of the archive available unless in his opinion it is not practicable to do so without risk to the proper preservation of the archive.
- (6) Where an archive has become available for public access in accordance with this section, any security classification applicable to the archive ceases to have effect.
- (7) Where a public State record is deposited in the Archives Office and any member of the public would, if the record had not been so deposited, have had a right in relation to the record (including a right to take or obtain a copy of the record without charge), any person may exercise the same right in relation to that record as he could have exercised if the record had remained in its original custody.

19. State records to be available to Government department, &c.

- (1) The State Archivist shall ensure that all State records received from a State authority or a local

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authority, or from an officer or employee of a Government department, a State authority, or a local authority, are made available, as reasonably required, for use by or at the direction of, that department or authority or a department or authority that has succeeded to the relevant functions of that department or authority.

- (2) Where a record that has been in existence for more than 25 years is made available under subsection (1), the record shall not be made available in a manner that involves its leaving the custody of the Archives Office except so far as necessary for the proper conduct of the business of the Government department, State authority, or local authority concerned.

Division 3 – Dealings with State records and State archives

20. Disposal, destruction, &c., of State records

- (1) Except as provided by this Part, a person shall not—
 - (a) destroy or otherwise dispose of a State record; or
 - (b) transfer, or be a party to arrangements for the transfer of, the custody of a State record; or
 - (c) transfer, or be a party to arrangements for the transfer of, the ownership of a State record; or

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- (ca) refuse to provide the State Archivist with the full name and residential address of the person for whom that person is acting as an agent in an arrangement under paragraph (b) or (c) for the transfer of a State record; or
 - (d) damage or alter a State record.

Penalty: Fine not exceeding 50 penalty units.

(2) Subsection (1) does not –

- (a) apply to anything done in accordance with a requirement of any law;
- (b) apply to anything done by or with the written permission of the State Archivist or in accordance with a practice or procedure approved in writing by the State Archivist; or
- (c) in relation to records that are not in the custody or possession of the relevant authority, apply to anything done for placing those records in the custody or possession of that authority.

(3 - 4)

(5) For the purpose of applying subsection (1) to a record of a kind used by means of any mechanical or electronic device or equipment, including a computer, any treatment or modification of the record which would prevent there being obtained from the record information or matter that could previously have been

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obtained from the record shall be deemed to be destruction of the record.

- (6) Where a record is disposed of (other than by means of destruction), or a person purports to transfer the custody or ownership of a record, in contravention of a provision of this Act, that disposal or purported transfer shall have no legal effect.

21. Alterations, &c., of State record

- (1) Where a State record has been in existence for 25 years or more, a person shall not add to, or otherwise alter, the record without the approval of the State Archivist.

Penalty: Fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply to anything done in accordance with a requirement of any law.

22. Parliamentary records to be returned to Parliament on request

If a record of the Parliament of Tasmania which was at some time in the custody of the Legislative Council, the House of Assembly, or the Legislative Council and House of Assembly jointly comes into the possession of the Archives Office and the President of the Legislative Council, the Speaker of the House of Assembly, or, as the case may be, the President and Speaker jointly request the return of the record, it is the

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duty of the State Archivist to comply with the request.

PART IV – MISCELLANEOUS

Division 1 – Evidentiary matters

23. Certified copies of records

- (1) The State Archivist may give a certificate that a State archive referred to in the certificate is a true copy of a record that is an archive in his custody.
- (2) An instrument in writing purporting to be a certificate given under subsection (1) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given and such a certificate is admissible in evidence in all courts of the matters stated in the certificate.

24. Certificate of destruction of State archives

- (1) Where the State Archivist is satisfied that a State archive has been destroyed in accordance with a provision of this Act or of either of the repealed Acts, he may give a certificate to the effect that the State archive has been so destroyed.
- (2) An instrument in writing purporting to be a certificate given under subsection (1) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given and such a certificate is admissible in evidence in all courts of the matters stated in the certificate.

25. Courts, &c., to take judicial notice of seal of Archives Office

All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Archives Office affixed to any document purporting to emanate from that Office and shall presume that it was duly affixed.

26. Legal validity of records, &c.

The legal validity of a record is not affected by its removal under the provisions of this Act or of either of the repealed Acts, or by any provision of this Act or those repealed Acts with respect to legal custody of the record.

Division 2 – Other matters

27. Access to records apart from this Act

Nothing in this Act prevents a person from publishing or otherwise giving access to records otherwise than pursuant to this Act if he can properly do so or is required by law to do so.

28. Protection against certain actions

- (1) Where, in the ordinary course of the administration of this Act, access is given to a State archive which is a State record kept in the Archives Office, being an archive required by Part III to be made available for public access –

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- (a) no action for defamation or breach of confidence lies, by reason of authorizing or giving that access, against the Crown in right of this State or any person concerned in authorizing or giving that access;
 - (b) the giving of that access shall not be taken, for the purposes of the law of defamation or breach of confidence, to constitute an authorization or approval of the publication of the record or of its contents by the person to whom that access was given; and
 - (c) a person concerned in authorizing or giving that access is not guilty of any offence by reason only of having authorized or given that access.
- (2) Where, in the ordinary course of the administration of this Act, access is given to a State archive other than a State record kept in the Archives Office, being an archive required by Part III to be made available for public access, no action for defamation or breach of confidence lies against the Crown in the right of this State or any person after the expiration of 75 years from and including the date on which the archive came into existence.

29. Regulations

- (1) The Governor may make regulations for the purposes of this Act.

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- (2) Without limiting the generality of subsection (1), regulations under that subsection may be made for or with respect to –
- (a) providing for the general management and control of the Archives Office;
 - (b) restricting or regulating the admission, or providing for the exclusion, of members of the public or of any person or class of persons to or from the Archives Office or any part of the Archives Office;
 - (c) regulating or prohibiting the copying of any State archive;
 - (d) prescribing the conditions subject to which a person may borrow a State archive;
 - (e) providing for the sale of copies of State archives and any publications published by the State Archivist for the purposes of this Act;
 - (f) prescribing duties of the State Archivist additional to those prescribed by this Act;
 - (g) prescribing the manner in which, the persons by whom, and the places at which, State records or State archives of different classes are required or permitted to be stored, protected, and cared for or, as the case may be, be destroyed or otherwise disposed of; and

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- (h) prescribing the manner in which, the persons by whom, and the conditions subject to which, records of State authorities and local authorities are required or permitted to be disposed of on the abolition or amalgamation, or the termination of the functions, of State authorities or local authorities or the transfer or amalgamation of offices or branches of such authorities.
- (3) Regulations under this section may be made subject to such conditions, or made to apply differently according to such factors, as may be specified in the regulations, or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.
- (4) A regulation under this section may authorize any matter or thing to be determined, applied, or regulated by any person specified in the regulations and may confer a discretion on such a person as to the circumstances in which or the conditions subject to which any such matter or thing may be so determined, applied, or regulated.
- (5) Regulations made for the purpose of paragraph (e) of subsection (1) may make provision for charges to be made for copies and publications referred to in that paragraph and confer on the State Archivist a discretion as to the amounts of those charges.

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30. Repeals, savings, and transitional provisions

- (1) The *Archives Act 1965* is repealed.
- (2) Schedule 1 has effect with respect to savings and matters of a transitional nature.

**SCHEDULE 1 – SAVINGS AND TRANSITIONAL
PROVISIONS**

Section 30(2)

1. Interpretation

In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires —

Board means the Tasmanian Library Advisory Board constituted under the *Libraries Act 1984*;

the repealed Act means the *Archives Act 1965*.

2. Principal Archivist to become State Archivist

On the commencement day, the person who was, immediately before that day, holding office as Principal Archivist shall be deemed to have been appointed as State Archivist for the purposes of this Act.

3. Other employees employed in the Archives Office

Any person who was, immediately before the commencement day, employed under section 4 of the repealed Act as an officer (other than as Principal Archivist) or as a clerk or servant shall be deemed on and from that day to be an officer or, in the case of a clerk or servant, an employee employed for the purposes of this Act.

4. Transfer of control of archives to State Archivist

- (1) All State records and other materials which were, immediately before the commencement day, deposited in the Archives Office or with the Principal Archivist shall, on and after that day, become the responsibility of the State Archivist subject to this Act and be deemed to be in his custody.
- (2) Where a State record deposited in the Archives Office is not already the property of the Crown immediately before the commencement day, the following provisions apply in respect of the record:
 - (a) if the record came into existence 25 or more years before that day – the record shall become the property of the Crown on that day;
 - (b) if the record came into existence less than 25 years before that day – the record shall become the property of the Crown at the expiration of 25 years from and including the date on which it came into existence.
- (3) Where any materials (other than State records) deposited in the Archives Office are not already the property of the Crown immediately before the commencement day, those materials shall, subject to any stipulation or agreement to the contrary imposed or made at or before the time at which they were received for deposit in the

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Archives Office, become the property of the Crown on that day.

5. Seal

Where any seal was provided under section 5 of the repealed Act, that seal may continue to be used for the purposes of this Act.

6. Indexes, &c.

All indexes and guides to, and calendars and texts of, records and other materials in the Archives Office which were compiled or made available under section 6 of the repealed Act shall be deemed to have been compiled or made available under and for the purposes of this Act.

7. Publications

Any publication prepared by the Board under and in accordance with section 6 of the repealed Act shall be deemed to have been prepared by the State Archivist under and in accordance with this Act.

8. Conditions imposed by Board

Where any conditions imposed by the Board under section 6 (2) (d) of the repealed Act were in force immediately before the commencement day, those conditions shall be deemed to be conditions imposed under section 18(4) of this Act.

9. Copies of materials authenticated by Board

Any copies of materials in the State Archives which were made and authenticated by the Board under section 6 (2) (e) of the repealed Act shall be deemed to have been made and authenticated by the State Archivist under section 8(2)(d) of this Act.

10. Arrangements entered into by Board

Any arrangements entered into by the Board under the repealed Act shall, unless terminated before the commencement day, be deemed to have been arrangements entered into by the State Archivist under this Act.

11. Notices

- (1) Any notice given under or for the purposes of the repealed Act which could have been given or made under or for the purposes of this Act and which has not ceased to have effect before the commencement day shall be deemed to have been given under or for the purposes of this Act as if this Act had been in force when the notice was given.
- (2) For the purposes of applying subclause (1) to a notice given by or to the Board under or for the purposes of the repealed Act, that notice shall be deemed to have been given by or to the State Archivist.

12. Condition imposed by head of department, &c.

Where any condition imposed by the head of a department under section 7 (7) of the repealed Act had not ceased to have effect before the commencement day, that condition shall continue to have effect as if it had been imposed by the relevant authority under section 15(3)(b) of this Act.

13. Certificates, &c., given by Board

Where any certificate given by the Board under the repealed Act is admissible in evidence in legal proceedings or it was provided by that Act that such a certificate is to be *prima facie* evidence of any matter, that certificate shall continue to have effect and be so admissible or, as the case may be, to be *prima facie* evidence of that matter notwithstanding the repeal of that Act.

14. Applications to Court

Where an application under section 16 or 17 of the repealed Act is pending immediately before the commencement day, that application may be dealt with as if that Act had not been repealed and as if a reference in those sections to the Board were a reference to the State Archivist.

15. Injunctions

Where an injunction is, immediately before the commencement day, in force under section 18 of

the repealed Act, that injunction shall continue in force as if that Act had not been repealed.

16. Claims for compensation

Where an application or complaint under section 19 of the repealed Act is pending immediately before the commencement day, that application or complaint may be dealt with as if that Act had not been repealed and as if a reference in that section to the Board were a reference to the Minister and the words “with the approval of the Minister” in subsection (1) of that section were omitted.

17. Gifts, &c., accepted by Board

Where, in accordance with section 20 of the repealed Act, the Board acquired by gift *inter vivos* or *mortis causa* or by bequest or devise any real or personal property subject to a condition and that condition had not ceased to have effect before the commencement day, that condition shall continue to have effect as if it had been agreed to by the Minister under section 9 of this Act.

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NOTES

The foregoing text of the *Archives Act 1983* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Archives Act 1983</i>	No. 76 of 1983	1.8.1984
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Administrative Arrangements (Miscellaneous Amendments) Act 1990</i>	No. 5 of 1990	1.7.1990
<i>Penalty Units and Other Penalties Amendment Act 1991</i>	No. 43 of 1991	18.12.1991
<i>Statute Law Revision Act 1991</i>	No. 46 of 1991	18.12.1991
<i>Archives Amendment Act 1993</i>	No. 52 of 1993	10.9.1993
<i>Tasmanian Government Insurance Office (Sale) Act 1993</i>	No. 27 of 1993	9.3.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Duties Act 2001</i>	No. 15 of 2001	1.7.2001
<i>Magistrates Court (Administrative Appeals Division) (Consequential Amendments) Act 2001</i>	No. 73 of 2001	1.7.2002
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Archives Amendment Act 2005</i>	No. 11 of 2005	6.5.2005
<i>Commercial Arbitration (Consequential Amendments) Act 2011</i>	No. 9 of 2011	1.10.2012
<i>Justice Miscellaneous (Independent Review Amendments) Act 2022</i>	No. 1 of 2022	18.3.2022

TABLE OF AMENDMENTS

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Provision affected	How affected
Section 3	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 46 of 1991, s. 4 and Sched. 2, No. 27 of 1993, s. 28, No. 30 of 1995, s. 3 and Sched. 1, No. 86 of 2000, Sched. 1, No. 76 of 2003, Sched. 1 and No. 11 of 2005, s. 4
Section 7	Substituted by No. 5 of 1990, s. 3 and Sched. 1 Amended by No. 86 of 2000, Sched. 1 and No. 11 of 2005, s. 5
Section 8	Amended by No. 5 of 1990, s. 3 and Sched. 1 and No. 11 of 2005, s. 6
Section 9	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 15 of 2001, Sched. 2 and No. 11 of 2005, s. 7
Section 10	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 43 of 1991, s. 5 and Sched. 1, No. 86 of 2000, Sched. 1 and No. 11 of 2005, s. 8
Section 10A	Inserted by No. 11 of 2005, s. 9
Section 11	Amended by No. 29 of 1984, s. 3 and Sched. 1 and No. 11 of 2005, s. 10
Section 13	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 73 of 2001, Sched. 1, No. 11 of 2005, s. 11 and No. 9 of 2011, Sched. 1
Section 14	Amended by No. 5 of 1990, s. 3 and Sched. 1
Section 16	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 43 of 1991, s. 5 and Sched. 1 and No. 11 of 2005, s. 12
Section 16A	Inserted by No. 1 of 2022, s. 4
Section 18	Amended by No. 52 of 1993, s. 4 and No. 1 of 2022, s. 5
Section 20	Amended by No. 43 of 1991, s. 5 and Sched. 1 and No. 11 of 2005, s. 13
Section 21	Amended by No. 43 of 1991, s. 3 and Sched. 1
Schedule 1	Amended by No. 46 of 1991, s. 4 and Sched. 2 and No. 68 of 1994, s. 3 and Sched. 1
