



REPUBLIC OF NAURU

NATIONAL HERITAGE ACT 2017

No. 23 of 2017

An Act to repeal the *Antiquities Act 1935* to provide for the protection and conservation of places and Nauru objects of heritage and the registration of such places and objects; and for related purposes

Certified: 14th September 2017

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Enacted by the Parliament of Nauru as follows:

PART 1- PRELIMINARY

1 Short title

This Act may be cited as the *National Heritage Act 2017*.

2 Commencement

This Act commences upon certification by the Speaker.

3 Definitions

In this Act:

'Director' means the Director of National Heritage appointed under section 5;

'excavation' means any operation or act designed to aid in the recovery of an object lying in or on the ground;

'export' means to take or cause to be taken out of Nauru;

'heritage' includes places and objects of heritage significance;

'heritage significance' means archaeological, architectural, cultural, scientific or social significance, antiquities, objects, sites, or war relics;

'licence' means a licence granted by the Minister under section 19;

'Minister' means the Minister to whom the responsibility of this Act is assigned;

'Nauru antiquities' includes Nauru relics and curios and articles of ethnological and anthropological interest or value and articles manufactured by the natives according to Nauru methods and historical remains of any description, and such other articles or things of historical or scientific value or interest and relation to Nauru as may be prescribed;

'National Heritage site' means a site having a value that has been registered by the Republic as being of national importance to the cultural heritage or history of the Republic;

'objects of heritage' means any movable article of heritage significance and includes but not limited to archaeological objects, antiquities and war relics;

'prohibited area' means an area declared under section 14;

'protected area' means an area declared under section 13;

'site' means an area declared by an order under section 13 or section 14 which includes any area of land or sea bed on which such object is situated;

'war relic' includes any object or artefact brought into the Republic by or for the use of any combatants in World War II.

4 Objects of the Act

The objects of the Act are to:

- (a) establish an office to implement the objects of this Act;
- (b) preserve objects of heritage and places of heritage significance which have lasting value and provide evidence of the origins of Nauruans as a distinct society;
- (c) promote for the benefit of all Nauruans, objects of heritage of every description, that has a significant cultural, national, historical importance or interest;
- (d) protect and maintain all Nauruan Heritage Site and objects of heritage;
- (e) provide for the establishment and maintenance of such Nauruan objects of heritage, for the benefit of the future generations of Nauru; and
- (f) provide sanctions for breaches of this Act.

PART 2- DIRECTOR OF NATIONAL HERITAGE

5 Director of National Heritage

- (1) There shall be an office of the Director of National Heritage.
- (2) The person appointed to be the Director shall have sound knowledge of and is willing to undertake all that is necessary to establish an office and Register of all Nauruan Heritage sites and objects of heritage.
- (3) The Director shall:
 - (a) maintain the Register;
 - (b) perform other duties under this Act; and
 - (c) do all things as are necessary to be done for the proper administration of this Act.

- (4) The Director has the powers expressly conferred by this Act or any other written law to be able to perform his or her functions and exercise powers under this Act.
- (5) The Minister acting on the recommendation of the Chief Secretary may appoint a Deputy Director of National Heritage.
- (6) The Deputy Director may perform such functions and exercise such powers as the Registrar may in writing from time to time direct or authorise him or her to do.

6 National Heritage Register

- (1) The Director shall be responsible for establishing and maintaining a Register of National Heritage under this Act.
- (2) Upon payment of prescribed fees:
 - (a) the Register shall be made available for inspection by any person during business hours; and
 - (b) certified copies of the entries in the Register shall be provided.

7 Functions of the Office of the Director

- (1) The responsibilities and duties of the Office of the Director shall be:
 - (a) to identify, record, investigate, assess, list, protect and conserve historic places, historic areas, or enter such places which have heritage value;
 - (b) to keep permanent records of objects of heritage and providing support for persons with a legal or equitable interest in such places and areas;
 - (c) to continue and maintain the Nauru's National Heritage List;
 - (d) to advocate the conservation and protection of historic places, and areas;
 - (e) to foster public interest and involvement in historic places and areas and in identifying, recording, investigating, assessing, protecting, for conserving and, maintaining the Nauru's Heritage List;
 - (f) to issue directives in accordance with this Act;
 - (g) to manage, administer, and control historic places, buildings, and other properties the Nauru National Heritage shall control or is vested in it to ensure their protection, preservation, and conservation; and

- (h) in the event of a national or local emergency to provide advice on heritage matters.
- (2) In performing his or her function under subsection (1)(c), the Director shall recognise the interests of an owner, as far as those interests are known, in a particular historic place or area.
- (3) The Minister may give directions to the Director that concern heritage matters and relating to particular historic places or areas.

8 Powers of the Director

- (1) The Director shall have the following powers:
 - (a) to identify, record, investigate, assess, protect, enter on land or in building contained in the Register, and conserve such historic places, and areas and objects of heritage;
 - (b) to acquire, restore, conserve, and manage historic places and areas;
 - (c) to assist any person or organisation to acquire, restore, conserve, or manage area;
 - (d) to erect suitable signs and notices on historic places and areas, subject to the consent of the owner first being obtained, in the case of any historic place or historic area not owned or controlled by the Director or vested to him;
 - (e) to enter into agreements with local authorities, corporations, societies, individuals, or other controlling bodies for the management, maintenance, and preservation of any historic place or historic area;
 - (f) in relation to any land or buildings owned or controlled by the Director or vested in him or her to make them accessible to the public, charge fees for admission, lease or use them for any suitable purpose;
 - (g) to promote or supervise the investigation of a historic place or historic area;
 - (h) to provide information relating to a historic place or historic area:
 - (i) to charge for services provided by the Director under this Act;
 - (j) to take appropriate enforcement or restraining action; and
 - (k) to carry out the functions and perform the duties conferred or imposed on the Director by this Act or under any other written law.

- (2) In exercising power under subsection (1), the Director shall recognise the interests of an owner as far as those interests are known, in a particular historic place or area.
- (3) Nothing in this Act requires the Director to negotiate or agree with any person to acquire any land or interest in land.
- (4) No interest in land may be regarded as having been taken or injuriously affected and no compensation is payable by reason only of any provision of this Act.

PART 3- VESTING OF NAURU HERITAGE OBJECTS TO THE REPUBLIC

9 Objects of heritage vests in the Republic

- (1) All objects of heritage vests in the Republic.
- (2) Any person who has in his or her custody, power or control any object of heritage shall return such objects to the Republic.
- (3) The Director shall issue a notice to any such person who has custody, power or control of objects of heritage to be delivered to a place or person to return such objects of heritage to the Director.
- (4) Any person who refuses or fails to comply with the notice issued under subsection (2) commits an offence and shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

10 Amnesty period for collection of Nauru objects of heritage

- (1) The Minister may from time to time by an Order issue an amnesty period by publishing a notice in the Gazette, requiring any person who possesses objects of heritage to surrender the same to the Republic.
- (2) The Order shall state the:
 - (a) duration of the amnesty; and
 - (b) place or person to where or whom to return the objects of heritage.
- (3) Any person who has the custody, power or control of an object of heritage and who returns the object of heritage during the amnesty period shall not be prosecuted for any offence under this Act or other written law.

11 Acquisition and safe keeping of objects of heritage

The Minister may through appropriated funds for the purpose of acquiring on behalf of the Republic:

- (a) acquire such objects of heritage as he or she deems expedient; and
- (b) establish a place for the safe custody of the object of heritage.

12 Discoveries of objects of heritage to be reported

- (1) Any person who discovers or has reason to believe that there exists any archaeological, architectural, cultural, historical, scientific or social object shall as soon as practicable report the discovery to the Director.
- (2) On receiving a report the Director shall forthwith take custody, power and control of the object.
- (3) Upon examination, if it appears to the Director that the object does not constitute an object of heritage, the Director shall return the object to the person from whom it was obtained.

PART 4 – PROTECTION OF AREA OF OBJECT OF HERITAGE

13 Protection of area of object of heritage

- (1) Subject to subsection (2), the Minister may by Order declare any area around an object of heritage as a protected area if the Minister is satisfied with respect to any site in the Republic that:
 - (a) the site is, or may prove to be, a heritage site; and
 - (b) on account of the historical, archaeological or artistic importance of the object, the site ought to be protected from unauthorised interference.
- (2) The Order shall:
 - (a) identify the site where the object lies or is supposed to lie or have lain;
 - (b) indicate the protected area within such distance of the site so identified; and
 - (c) the distance specified in subsection 2(b) has to be a distance that is appropriate to ensure the protection of the object.
- (3) A person commits an offence if in a protected area he or she:

- (a) tampers with, damages or removes any object; or
 - (b) carries out excavation operations directed to the exploration of any site or to removing any part from the object or from the ground, or uses an equipment constructed or adapted for any purpose of excavation operations without a licence.
- (4) Any person who commits an offence under this section shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or to both.

14 Prohibition on approaching sites

The Minister may by Order published in the Gazette declare an area around an object of heritage as a prohibited area, if the Minister is satisfied that the object:

- (a) is in a condition that is a potential danger to life or property; and
- (b) ought to be protected from unauthorised interference.

PART 5 – PROHIBITION ON THE REMOVAL OF OBJECTS OF HERITAGE

15 Prohibition on removal of object of heritage

- (1) No object of heritage shall be removed by any means, including by offering as a gift, from the Republic without the prior written approval of the Minister.
- (2) Any person who attempts to or removes any object of heritage from the Republic commits an offence and shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.
- (3) The court in sentencing an offender in subsection (2) shall also make an order for the return of the object of heritage to the Director.

16 Procedure to remove objects of heritage

- (1) Any person who intends to remove an object of heritage shall:
- (a) apply in a prescribed form;
 - (b) provide a reason for such removal; and
 - (c) provide whether the object is to be removed permanently or will be returned to the Republic.
- (2) The Director shall submit the application together with his or her report to the Minister for his or her consideration of the application.

- (3) If the Minister authorises the removal of the object, the Director shall:
 - (a) issue a certificate for the removal of object of heritage; and
 - (b) provide a copy of the certificate to the Chief Collector of Customs.
- (4) The exporter of the object of heritage shall provide the object and the certificate to the Chief Collector of Customs at least 24 hours prior to shipment.

17 Forfeiture of object of heritage

- (1) An object of heritage entered or shipped for export contrary to the Act, shall be forfeited to the Republic by a Customs, Quarantine, Police or any authorised officer at the port of entry or exit.
- (2) A notice of forfeiture shall forthwith be issued to the exporter or importer of the object of heritage by the Officer seizing the object of heritage.
- (3) Any objects of heritage forfeited shall forthwith be delivered to the Director.
- (4) The Minister upon the recommendation of the Director may after proper inquiry cancel the forfeiture if he or she considers it proper to do so.

18 Prohibited acquisition

- (1) The Minister may, by order published in the Gazette, prohibit the acquisition by purchase or otherwise of any objects of heritage by any person.
- (2) Any person who attempts to purchase any object of heritage from another person commits an offence and shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

19 Licence for excavation operation

- (1) A person may apply to the Minister in writing for a licence to carry out excavation operations.
- (2) A licence granted by the Minister shall be in writing and granted only to persons who appear to the Minister either to:
 - (a) be properly equipped, to carry out excavations in a manner appropriate to the historical, archaeological or artistic importance of any object which may be lying in the area; or

(b) have any other legitimate reason for carrying out excavations in the area.

- (3) A licence granted under subsection (2) shall be subject to conditions and may be varied or revoked by the Minister at any time after giving 14 days' notice to the licensee.
- (4) A licensee commits an offence if he or she does anything or causes or permits anything to be done contrary to the conditions of the licence.
- (5) A licensee who commits an offence under subsection (4) shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.
- (6) For the purposes of this section, 'licensee' means a person granted a licence by the Minister under this section.

PART 6 – OFFENCES AND PENALTIES

20 Offence of intentionally modifying or destroying objects of heritage

- (1) A person commits an offence if he or she intentionally and without the authority of the Director:
- (a) modifies or destroys a historic place, or area, property, or thing that is protected under this Act; or
 - (b) causes the place, area, property, thing, or associated land to be modified or destroyed.
- (2) Any person who commits an offence under subsection (1) shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

21 Offence of refusing access, etc.

- (1) A person commits an offence if he or she:
- (a) refuses to let the Director or an authorised person have access to a protected area for the purpose of carrying out any duties or functions under this Act; and
 - (b) obstructs any person who is exercising his or her power under this Act.
- (2) Any person who commits an offence under subsection (1) shall upon conviction be liable to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 12 months or both.

22**Other offences**

- (1) A person commits an offence in respect of land or a place vested in, or under the control of the Director if the person without the authority of the Director:
 - (a) enters the land or a historic place or area when he or she knows, or ought reasonably to have suspected, that the land or historic place is a protected area which is vested in or is under the control of the Director;
 - (b) lights a fire on land when he or she knows, or ought reasonably to have suspected, that the land is a protected area and is vested in, or is under the control of the Director;
 - (c) lights a fire or causes or permits a fire to be lit on any land:
 - (i) when he or she knows, or ought reasonably to have suspected, that the fire is likely to spread into the protected area or property vested in or under the control of the Director; and
 - (ii) the fire spreads into and damages or destroys that property;
 - (d) unlawfully alters, obliterates, defaces, pulls up, removes, or destroys any boundary mark, plaque, sign, or poster on any land when he or she knows, or ought reasonably to have suspected, that the land is protected area and vested in or is under the control of the Director;
 - (e) takes or removes, or causes to be taken or removed, any property or thing from any land or building which is a protected area and vested in, or under the control of the Director;
 - (f) receives any property or thing vested in, or under the control of the Director when he or she knows, or ought reasonably to have suspected, that the property or thing has been removed unlawfully from the land or a building which is protected area and vested in, or under the control of the Director; and
 - (g) alters, obliterates, defaces, pulls up, removes, or destroys any plaque or sign supplied and erected by the Director on any land or building without first obtaining the consent of the Director.
- (2) Any person who commits an offence under subsection (1) shall upon conviction be liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or both.

23**Offences by corporations**

- (1) Where an offence has been committed under this Act by a corporation, firm, society or other body of persons, any person who

at the time of the commission of the offence was a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons or was purporting to act in such capacity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly unless he or she proves that:

(a) the offence was committed without his or her consent or collusion; and

(b) he or she exercised all such diligence to prevent the commission of the offence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity and to all circumstances.

(2) Upon conviction, the court may impose:

(a) in the case of a corporation, firm, society or other body of persons a fine not exceeding \$100,000; and

(b) in the case of a Director, manager, secretary or officer or a partner of the company, firm, society or other body of persons, a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years or both.

PART 7 – MISCELLANEOUS

24 Acts of emergency

If a person enters a protected or prohibited area as an act of emergency to either assist or rescue anyone from any form of danger, such act will not constitute an offence under this Act.

25 Jurisdiction of Court

The District Court shall have jurisdiction to hear and determine all offences under this Act and, shall have power to impose the full penalty or punishment in respect of the offences under this Act.

26 Regulations

Cabinet may make regulations prescribing all matters necessary or convenient to give effect to this Act.

27 Repeal

The Antiquities Act 1935 is repealed by the provisions of this Act.