

CHAPTER 264

*Ordinances Nos. 6 of 1940, 2 of 1945*PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND
PALAEOLOGICAL INTERESTAN ACT TO PROVIDE FOR THE PRESERVATION OF OBJECTS OF
ARCHAEOLOGICAL AND PALAEOLOGICAL INTEREST.

[28th February, 1940.]

Short title

1. This Act may be cited as the Preservation of Objects of Archaeological and Palaeontological Interest Act.

Interpretation

2. In this Act, unless the context otherwise requires—

“Board ” means the Board of Trustees established under the provisions of the Fiji Museum Act; *(Cap. 263.)*

“maintain” and “maintenance” include the fencing, covering in, repairing, restoring and cleansing of a monument, and the doing of any act which may be necessary for the purpose of maintaining a monument or of securing convenient access thereto;

“monument” means—

(a) any object of archaeological or palaeontological interest, and

(b) any area of land in which any such object is believed to exist, which the Minister has by notice in the Gazette declared under section 6 to be a monument;

“object of archaeological or palaeontological interest” means any structure, erection, memorial, tumulus, cairn, place of interment, pit-dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rockdrawing, painting, sculpture, inscription, monolith, or any remains thereof, fossil remains of man or animals or plants or any bed or beds containing such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, or historic interest, and includes—

(a) the site on which such object of archaeological or palaeontological interest was discovered or exists;

(b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and

(c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;

“owner” includes a joint owner invested with powers of management on

behalf of himself and other joint owners, and any agent or trustee exercising powers of management over a monument, and the successor in title of any such owner and the successor in office of any such agent or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Prohibition of certain acts unless authorised by permit

3.—(1) Unless authorised by a permit issued by the Board, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest. Such permit shall, so far as is practicable, be in Form A set out in the Schedule.

(2) The Board shall, before issuing a permit under this section, satisfy itself that the applicant is competent both by training or experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in its discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.

(3) In every permit issued under this section there shall be implied an undertaking on the part of the permit-holder that he, or the institution which he represents, will, within a period of two years after the completion of the exploration or excavation authorised by the permit or within such longer period as the Board may in writing approve, produce an adequate scientific report or publication on the results of the exploration and/or excavation, as the case may be, and will deposit with the Board two copies of such report or publication.

(4) The Board may at any time, without assigning any reason, revoke a permit given under this section.

A permit may specify limitations and conditions

4. A permit given under section 3 may specify, in regard to the acts which it authorises, such limitations and conditions as the Board may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorise excavation for and its removal to a place within Fiji subject to such limitations and conditions as to the Board shall seem fit.

Discoverer of any object to inform the Board

5.—(1) Where any person discovers any object of archaeological or palaeontological interest in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof to the Board.

(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating the precise site and the circumstances of the discovery, to the Board, and shall, if so instructed by the Board, deliver such object to the Board.

(3) Any person who fails to comply with the provisions of subsection (1) or subsection (2), as the case may be, shall be guilty of an offence, and shall be liable to a fine of two hundred dollars or to imprisonment for six months, or to both such fine and imprisonment. (*Amended by 2 of 1945, s. 124.*)

Power to declare object to be monument

6.—(1) The Minister may, by notice in the Gazette, declare any object of archaeological or palaeontological interest and/or any area of land in which such objects are believed to exist to be a monument within the meaning of this Act. Such notice shall state that objections to the declaration of such object or such area as a monument shall be lodged with the Permanent Secretary to the Ministry within one month from the date of the publication of the notice.

(2) A copy of every notice published under the provisions of subsection (1) shall forthwith be posted by the Board in a conspicuous place on or near the object or on the area to which it relates.

(3) On the expiration of the said period of one month, the Minister after considering the objections, if any, shall confirm or withdraw the notice.

(4) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the object of archaeological or palaeontological interest or area to which it relates is a monument within the meaning of this Act.

Acquisition of rights in or guardianship over monuments

7.—(1) The Board may, with the sanction of the Minister, purchase or take a lease of any monument.

(2) The Board may, with the like sanction, accept a gift or bequest of any monument.

(3) The owner of any monument may by written instrument constitute the Board the guardian of such monument, and the Board may, with the sanction of the Minister, accept such guardianship.

(4) When the Board has accepted the guardianship of a monument under the provisions of subsection (3) the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to such monument as if the Board had not been constituted guardian thereof.

(5) When the Board has accepted the guardianship of a monument under the provisions of subsection (3) the provisions of this Act relating to agreements executed under section 8 shall apply to the written instrument executed under the said subsection.

(6) Where a monument is without an owner, the Board may, with the sanction of the Minister, assume the guardianship of such monument.

Preservation of monuments by agreement

8.—(1) The Board may, with the sanction of the Minister, enter into a written agreement with the owner of any monument for the protection or preservation of such monument.

(2) An agreement under this section may provide for all or any of the following matters:—

- (a) the maintenance of the monument;
- (b) the custody of the monument and the duties of any person who may be employed in connexion therewith;
- (c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;
- (d) the facilities of access to be permitted to the public or to any portion of

the public and to persons deputed by the owner or the Board to inspect or to maintain the monument;

- (e) the notice to be given to the Board in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Board to purchase such land or any specified portion of such land at its market value;
- (f) the payment of any expenses incurred by the owner or by the Board in connexion with the protection or preservation of the monument;
- (g) the procedure relating to the settlement of any dispute arising out of the agreement;
- (h) any matter connected with the preservation of the monument which is a proper subject of agreement between the owner and the authority; and
- (i) the removal subject to the provisions of this Act of the monument to a place of safe custody.

(3) The terms of an agreement under this section may be altered from time to time with the sanction of the Minister and with the consent of the owner.

(4) Subject to the sanction of the Minister, the Board may terminate an agreement under this section on giving six months' notice in writing to the owner.

(5) The owner may terminate the agreement under this section on giving six months' notice to the Board.

(6) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(7) Any rights acquired by the Board in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability

9. If the owner is unable, by reason of infancy or other disability to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 8.

Enforcement of agreement

10.—(1) If the Board apprehends that the owner or occupier of a monument intends to build on or near the site of such monument in contravention of the terms of an agreement for its protection or preservation under section 8, the Board may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the protection, preservation or maintenance of a monument under section 8 refuses to do any act which is in the opinion of the Board necessary to such protection, preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Board, the Board may authorise any person to do any such act, and the expenses of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner.

(3) A person aggrieved by an order made under this section may appeal to the Minister who may cancel or modify it and whose decision shall be final.

Compulsory purchase of monuments

11.—(1) If the Minister apprehends that a monument is in danger of being destroyed, injured or allowed to fall into decay, he may proceed to acquire such monument under the provisions of the Crown Acquisition of Lands Act, as if the preservation of such monument were a “public purpose” within the meaning of the Act.

(2) The powers of compulsory purchase conferred by the provisions of subsection (1) shall not be exercised in case of—

(a) any monument which, or any part of which, is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 8.

(3) In any case other than the cases referred to in subsection (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 8 has failed, within such reasonable period as the Minister may fix in this behalf, to enter into an agreement under the said section, or has terminated or given notice of his intention to terminate such an agreement.

Maintenance of monuments

12.—(1) Every monument in respect of which the Board has acquired any of the rights mentioned in section 7 or which has been compulsorily purchased under section 11 shall be maintained by the Board.

(2) When the Board has accepted the guardianship of a monument under section 7 the Board shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times for the purpose of inspection and for the purpose of bringing such materials and doing such acts as the Board may consider necessary for the maintenance or preservation thereof:

Provided that the right of access conferred on the Board under this subsection shall be deemed to extend to the duly authorised agents, inspectors and workmen of the Board.

Voluntary contributions

13. The Board may receive voluntary contributions towards the cost of maintaining a monument and may, subject to the approval of the Minister, give orders as to the management and application of any funds so received:

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of places of worship, etc., from misuse, pollution or desecration

14.—(1) A place of worship or tomb maintained by the Board under this Act shall not be used for any purpose inconsistent with its character.

(2) When the Board has, under section 7, purchased or taken a lease of any monument, or has accepted a gift or bequest thereof, or has accepted the guardianship thereof, and such monument or any part thereof is periodically used for religious worship or observances by any community, the Board shall make due provision for the protection of such monument or such part thereof from pollution or desecration—

- (a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used; or
- (b) by taking such other action as the Board may think necessary in this behalf.

Relinquishment of rights in a monument

15. Subject to the sanction of the Minister, the Board may—

- (a) where rights have been acquired by such authority in respect of a monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or
- (b) relinquish any guardianship which the Board has accepted under this Act.

Right of access by public to monuments

16. Subject to such regulations as may be made by the Minister under section 23, the public shall have a right of access to any monument maintained by the Board under this Act.

Offences

17. Save as is provided in this Act, any person who destroys, removes, injures, alters, defaces or imperils a monument, or any object of archaeological or palaeontological interest, and any owner or occupier who contravenes an order made under subsection (1) of section 10, and any person who contravenes any of the terms and conditions imposed in a permit granted under this Act, and any person who contravenes any of the provisions of subsection (1) or (3), of section 3 or subsection (1) of section 19, shall be guilty of an offence and shall be liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and imprisonment. (*Amended by 2 of 1945, s. 124.*)

Permit to excavate or remove a monument

18. Notwithstanding anything contained in this Act, where the Board is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, it may grant a permit to any person to excavate and/or remove to a place within Fiji any such monument, or any part thereof, on such terms and subject to such conditions as it may think fit. Such permit shall, as far as is practicable, be in Form B set out in the Schedule.

Permit to remove any object or monument from Fiji

19.—(1) No monument or object of archaeological or palaeontological interest may be removed from Fiji unless such removal has been authorised by a permit issued by the Board. Such permit shall, so far as is practicable, be in Form C set out in the Schedule.

(2) The Board may issue a permit subject to such terms and conditions, which may include the surrender to the Crown of a portion of the monument or object of archaeological or palaeontological interest, as it may deem fit, or it may, without assigning the reason, refuse to issue a permit.

(3) Where under the provisions of subsection (2) any portion of a monument or of an object of archaeological or palaeontological interest has been surrendered to the Crown, the Minister may deposit the portion so surrendered in any museum or similar institution in Fiji or elsewhere.

(4) An application for a permit under this section shall be made in writing to the Board at least thirty days before the date of the proposed removal and shall contain a full description of the monument or object of archaeological or palaeontological interest in respect of which the application is made. Before issuing a permit under this section, the Board may cause an inspection to be made and may cause the monument or object of archaeological or palaeontological interest to be sealed:

Provided that no such permit shall authorise the removal from Fiji of any monument or object of archaeological or palaeontological interest except through a customs port of entry and such permit shall be surrendered to a customs officer before export is effected. A customs officer shall detain any monument or object of archaeological or palaeontological interest until such permit shall have been surrendered. Any monument or object of archaeological or palaeontological interest may be confiscated and disposed of as the Minister may direct if such permit is not produced and surrendered within a reasonable period of time.

Power to inspect and order cessation of work

20.—(1) The Board and any other person specially authorised by the Minister, may, at any time, inspect work being done in connexion with objects of archaeological or palaeontological interest or a monument, and may order cessation of such work pending further orders from the Minister.

(2) Any person who fails to comply with an order issued under this section shall be guilty of an offence, and shall be liable to a fine of two hundred dollars or to imprisonment for six months or to both such fine and imprisonment.

(Amended by 2 of 1945, s. 124.)

Assessment of market value

21. The market value of any property which the Minister is empowered to purchase at such value under this Act shall, where any dispute arises touching the amount of such market value, be ascertained in the manner provided by the Crown Acquisition of Lands Act, so far as it can be made applicable. *(Cap. 135.)*

Exemption from stamp duty

22. Any instrument executed under section 7 or section 8 shall be exempt from stamp duty.

Power to make regulations

23. The Minister may make regulations for carrying out any of the purposes of this Act.

SCHEDULE

FORM A

(Sections 3 and 4)

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND
 PALAEOONTOLOGICAL INTEREST ACT

PERMIT TO SEARCH FOR AND/OR TO REMOVE WITHIN FIJI OBJECTS OF
 ARCHAEOLOGICAL AND PALAEOONTOLOGICAL INTEREST

Subject to the limitations and conditions set out hereunder,
 of _____, is hereby authorised to search in Fiji either by means of
 excavation or surface operations for objects of archaeological and palaeontological
 interest and to remove such objects from the site on which they are found
 to _____

Trustees of the Fiji Museum.

Suva, this _____ day of _____, 19 _____

Conditions:—

FORM B

(Section 18)

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND
 PALAEOONTOLOGICAL INTEREST ACT

PERMIT TO EXCAVATE OR REMOVE A MONUMENT WITHIN FIJI

Subject to the terms and conditions set out hereunder,
 of _____, is hereby granted permission to excavate and/or to
 remove to _____ the following monument:

Trustees of the Fiji Museum.

Suva, this _____ day of _____, 19 _____

Conditions:—

FORM C

THE PRESERVATION OF OBJECTS OF ARCHAEOLOGICAL AND
PALAEOLOGICAL INTEREST ACT

PERMIT TO REMOVE FROM FIJI AN OBJECT OF ARCHAEOLOGICAL AND
PALAEOLOGICAL INTEREST OR A MONUMENT

Subject to the terms and conditions set out hereunder,
of _____, is hereby authorised to remove from Fiji by air/ship
through the port of _____ the following object(s) of archaeological and
palaeontological interest/monument(s) to _____

_____ Trustees of the Fiji Museum.
Suva, this _____ day of _____, 19 _____
Conditions:—

Controlled by Ministry of Education