

PROTECTION OF TRADITIONAL KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSIONS

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Protection of Traditional Knowledge and Traditional Cultural Expressions Act 2026

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Protection of Traditional Knowledge and Traditional Cultural Expressions Act 2026

TABLE OF AMENDMENTS

The Protection of Traditional Knowledge and Traditional Cultural Expressions Act 2026 No 2 was certified and commenced on 14 January 2026.

Amending Legislation	Certified	Date of Commencement
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An Act to provide for the protection of traditional knowledge, traditional cultural expressions and for other related purposes.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title

This Act may be cited as the *Protection of Traditional Knowledge and Traditional Cultural Expressions Act 2026*.

2 Commencement

This Act commences on the date it is certified by the Speaker.

3 Objectives of this Act

The objectives of this Act are to:

- (a) establish a Nauru Cultural Authority and provide for its functions and powers in relation to determining matters relating to protection of traditional knowledge and traditional cultural expressions;
- (b) provide that customary use does not give rise to criminal or civil liability;
- (c) provide for what constitutes as a traditional cultural right in relation to traditional knowledge and traditional cultural expressions;
- (d) provide for what constitutes as a moral right in relation to traditional knowledge and traditional cultural expressions;
- (e) provide for:
 - (i) procedure for obtaining free, prior and informed consent from traditional owners for the use of traditional knowledge or traditional cultural expressions;
 - (ii) procedure for identification of traditional owners; and
 - (iii) process and terms and conditions of authorised user agreements;
- (f) provide for protection of Nauruan traditional knowledge and traditional cultural expression from misrepresentation;
- (g) provide for enforcement of the Act and remedies that may be sought under the Act.

4 Interpretation

In this Act:

‘authorised user agreement’ means a written agreement entered into under Division 1 or 2 of Part 6;

‘Authority’ means the Nauru Cultural Authority established under Section 5;

‘customary use’ means the use of traditional knowledge or traditional cultural expressions in accordance with the customary practices and usage of the traditional owners;

‘derivative work’ means any intellectual creation or innovation based upon or derived from traditional knowledge or traditional cultural expressions;

‘derogatory treatment’ means any act or omission that causes material distortion, mutilation or alteration of the traditional knowledge or traditional cultural expressions, in a manner prejudicial to the:

- (a) honour or reputation of the traditional owners; or
- (b) integrity of the traditional knowledge or traditional cultural expressions;

‘incidental use’ includes taking a photograph or making a recording of any matter which is not traditional knowledge or traditional cultural expression and incidentally captures an image or record of the traditional knowledge or traditional cultural expression;

‘Minister’ means the Minister responsible for this Act;

‘moral right’ means a right under Section 31;

‘sacred’ or ‘secret’ means any traditional knowledge or expressions of culture that have a secret or sacred significance according to the customary practices and usage of the traditional owners concerned;

‘traditional cultural right’ means a right under Section 24;

‘traditional cultural expressions’ means any form in which traditional cultural practices and knowledge are expressed, appears or manifested, irrespective of content, quality or purpose, whether tangible or intangible, and, without limiting the preceding words, includes:

- (a) names, stories, chants, riddles, histories and songs in oral narratives;
- (b) art and craft, musical instruments, sculpture, painting, carving, pottery, terra-cotta mosaic, woodwork, metalware, painting, jewellery, weaving, needlework, shell work, rugs, costumes and textiles;
- (c) music, dances, theatre, literature, ceremonies, ritual performances and cultural practices;
- (d) the delineated forms, parts and details of designs and visual compositions; and
- (e) architectural forms.

‘traditional knowledge’ includes any knowledge that generally:

- (a) is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes;
- (b) is or has been transmitted from generation to generation in any manner whatsoever;
- (c) is regarded as pertaining to a particular group, clan or community within the Republic; or
- (d) is collectively originated and held; and

‘traditional owners’ means:

- (a) the group, clan or community of people; or
- (b) the individual who is recognised by a group, clan or community within the Republic as the individual,

in whom the custody or protection of the traditional knowledge or expressions of culture are entrusted in accordance with the customary practices and usage of that group, clan or community.

PART 2 — NAURU CULTURAL AUTHORITY

5 Establishment of the Nauru Cultural Authority

- (1) The Nauru Cultural Authority is established.
- (2) The Authority is responsible to the Minister.

6 Members of the Authority

- (1) The Authority shall consist of 3 members, who are appointed by the Cabinet on the recommendation of the Minister.
- (2) One of the members shall be appointed as the Chairperson of the Authority, by Cabinet on the recommendation of the Minister.
- (3) The members shall hold office for a term of 3 years and may be eligible for reappointment.

7 Criteria for appointment of members of the Authority

- (1) A person is eligible to be appointed as a member of the Authority under Section 6, where he or she meets the following criteria:
 - (a) is of good character;
 - (b) is well versed in traditional knowledge and traditional cultural expressions, practices and usage; and
 - (c) is not disqualified under subsection (2).
- (2) No person under subsection (1) shall be eligible to be appointed or remain as a member of the Authority, where he or she:
 - (a) is or becomes an undischarged bankrupt or is insolvent in or outside of the Republic;
 - (b) is nominated as a candidate in an election for the Parliament or elected as a Member of the Parliament;
 - (c) is or after appointment is convicted of an offence punishable by imprisonment for a term of 1 year or more; or
 - (d) is unable to perform his or her functions or exercise powers under this Act as a consequence of any physical or mental impairment.

8 Removal of a member

A member appointed under Section 6 shall be removed by the Cabinet where he or she:

- (a) becomes disqualified under Section 7(2);
- (b) commits a serious breach of the terms and conditions of appointment; or
- (c) fails to perform his or her functions or exercise the powers under this Act.

9 Remuneration of the members

The Minister in consultation with the Cabinet shall fix the remuneration, sitting allowance or other benefits for the members of the Authority.

10 Disclosure of interest

- (1) Where a member has any interest relating to a matter before the Authority

for determination, the member shall disclose the details of his or her interest as soon as practicable after the member becomes aware that he or she has an interest.

- (2) A disclosure under subsection (1), shall be recorded in the minutes of the meeting of the Authority and the member:
- (a) after the disclosure, shall not take part in any deliberation or decision of the Authority in respect of that matter; and
 - (b) shall be disregarded for the purposes of constituting a quorum of the Authority in that deliberation or decision.

11 Functions of the Authority

The Authority shall:

- (a) receive and process applications under Part 6;
- (b) monitor compliance with authorised user agreements and to advise traditional owners of any breaches of such agreements;
- (c) develop standard terms and conditions for authorised user agreements;
- (d) provide training and education programs for traditional owners and users of traditional knowledge or traditional cultural expressions;
- (e) develop a Code of Ethics in relation to the use of traditional knowledge and traditional cultural expressions;
- (f) to issue advisory guidelines for the purposes of this Act;
- (g) coordinate with regional or international bodies in relation to matters under this Act;
- (h) to establish, keep and maintain a record of traditional owners, traditional knowledge and traditional cultural expressions;
- (i) where requested to do so, to provide guidance on the meaning of customary use in specific cases; and
- (j) such other functions as are conferred on it by the Minister, this Act or any written law.

12 Powers of the Authority

The Authority shall have the power to do all things necessary or convenient to be done for the performance of its functions under this Act or any other written law.

13 Authority may delegate its functions and powers

The Authority may delegate the performance of its functions or exercise of its powers to the Director or any other member of the staff of the Authority.

14 Meetings of the Authority

- (1) The Authority shall regulate the procedure for its meetings.
- (2) The Chairperson shall appoint the time and place for any meeting of the Authority and shall serve notice of such meeting to all the members.
- (3) A meeting of the Authority may be held by a quorum of 2 members.
- (4) Each member has one vote and the decision of the Authority shall be by majority votes.
- (5) In a meeting of the Authority where only 2 members are present and a majority decision is not reached, the Authority shall re-constitute with the 3 members to make a decision.

15 Director for Protection of Traditional Knowledge and Traditional Cultural Expressions

- (1) There shall be established the office of the Director for the Protection of Traditional Knowledge and Traditional Cultural Expressions.
- (2) The Director shall be appointed by the Chief Secretary on the recommendation of the Authority.
- (3) The terms and conditions of appointment of the Director shall be in accordance with the *Public Service Act 2016*.
- (4) Where the Director is unable to perform the functions of the office for any reason including any official travel, recreation leave or medical leave, the Chief Secretary shall on the advice of the Authority appoint another person to act as the Director for such period as may be necessary.
- (5) The Director shall report to the Authority in relation to any matter contained in this Act.

16 Functions of the Director

The functions of the Director are to:

- (a) assist and provide administrative support to the Authority;
- (b) keep and maintain the records of the applications and other documents required in:
 - (i) the performance of the Authority's or his or her functions; and
 - (ii) the exercise of the Committee's or his or her powers;
- (c) ensure that the Act, regulations, policies and any other publication for the purposes of this Act is readily available for access by a person requesting a copy;
- (d) provide technical advice in relation to any matter under this Act; and
- (e) any other functions as may be prescribed or conferred under this Act or any other written law.

17 Powers of the Director

The Director has the power to do all things necessary or convenient to be done for the performance of his or her functions under this Act or any other written law.

18 Staff of the Authority

The Chief Secretary on the recommendation of the Authority may appoint other staff of the Authority, pursuant to the *Public Service Act 2016*.

19 Code of conduct of the Authority

The members, Director and the staff of the Authority shall be bound by the prescribed Code of Conduct of the Authority.

20 Funds of the Authority

- (1) The funds of the Authority shall consist of monies:
 - (a) appropriated by the Parliament; or
 - (b) any specific donor funding.

- (2) The Authority shall have the power to authorise the expenditure of the funds for the purposes of carrying out the functions and the exercise of powers of the Authority.

21 Annual report and accounts

- (1) The Authority shall prepare and publish an annual report of its activities during the preceding financial year containing:
- (a) the financial and administrative performance of its functions and exercise of its powers, including an assessment of the Authority's progress in achieving the objective of the Act under Section 3;
 - (b) its activities and progress in respect of the performance of its functions and the exercise of its powers under this Act;
 - (c) nature or summary of determinations, orders or decisions made under this Act;
 - (d) nature of complaints, investigations and enforcement of decisions or orders; and
 - (e) such other relevant matters.
- (2) The annual report shall contain audited accounts of the income or expenditure of the Authority.
- (3) The Authority shall provide a copy of its annual report to the Minister who shall table it in Parliament as soon as practicable after receiving the report.
- (4) After the annual report is tabled in Parliament under subsection (3), the Authority shall publish the annual report on its website or by any other electronic form accessible without any cost to the public.

[The next page is 890,501]

PART 3 — CUSTOMARY USE NOT TO GIVE RISE TO LIABILITY

22 Customary use

The customary use of traditional knowledge or traditional cultural expressions shall not give rise to any criminal or civil liability under this Act.

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PART 4 — TRADITIONAL CULTURAL RIGHT

23 Traditional owner holds traditional cultural right

- (1) A traditional owner shall hold a traditional cultural right.
- (2) A traditional owner shall be entitled to exercise his or her traditional cultural right under this Part.

24 Meaning of traditional cultural right

A traditional cultural right means the right to:

- (a) reproduce the traditional knowledge or traditional cultural expressions;
- (b) publish the traditional knowledge or traditional cultural expressions;
- (c) perform or display the traditional knowledge or traditional cultural expressions in any place whatsoever;
- (d) broadcast the traditional knowledge or traditional cultural expressions by radio, television, satellite, cable or any other means of broadcasting or communication;
- (e) translate, adapt, arrange, transform or modify the traditional knowledge or traditional cultural expressions;
- (f) fixate the traditional knowledge or traditional cultural expressions through any process such as making a photograph, film or sound recording;
- (g) make available traditional knowledge or traditional cultural expressions for access by any person in any manner whatsoever;
- (h) create derivative works;
- (i) make, use, offer for sale, sell, import or export traditional knowledge or traditional cultural expressions or products deriving from traditional knowledge or traditional cultural expressions;
- (j) use the traditional knowledge or traditional cultural expressions in any other material form; or
- (k) do such other action in relation to traditional knowledge or traditional cultural expression as may be prescribed.

25 Material form of traditional cultural right is not required

For the avoidance of doubt, a traditional cultural right exists in respect of traditional knowledge or traditional cultural expressions whether or not such exist in physical or material form.

26 Traditional cultural right exists in perpetuity

A traditional cultural right shall exist in perpetuity.

27 Traditional cultural right not transferrable or waivable

A traditional cultural right shall not be transferred, alienated, sold or waived.

28 Traditional cultural right in addition to copyright, trademark, patents or other intellectual property right

A traditional cultural right shall be in addition to and shall not affect, any right that may subsist under any written law relating to copyright, trademarks, patents, designs or other intellectual property.

29 Derivative works

- (1) A copyright, trademark, patent, design or other intellectual property right that exists in relation to a derivative work vests in the creator of such work or as otherwise provided by the relevant written law.
- (2) Where a derivative work derived from traditional knowledge or traditional cultural expressions are to be used for a commercial purpose, the person proposed to use such derivative work shall:
 - (a) obtain the free, prior and informed consent for the use of the traditional knowledge or traditional cultural expressions from the traditional owner under Part 6; and
 - (b) enter into an authorised user agreement pursuant to Part 6 with the:
 - (i) traditional owner of the traditional cultural right where the traditional owner has been identified or is known; or
 - (ii) Authority where the traditional owner has not been identified or is known.
- (3) An authorised user agreement shall:
 - (a) contain a benefit sharing arrangement providing for equitable monetary or non-monetary compensation to the traditional owner;
 - (b) provide for identification of the traditional knowledge or traditional cultural expressions on which the derivative work is based in an appropriate manner in connection with the exploitation of the derivative work by acknowledging the traditional owner and the geographical place from which it originated; and
 - (c) provide that the traditional knowledge or traditional cultural expression in the derived work shall not be subject to derogatory treatment.

[The next page is 890,901]

PART 5 — MORAL RIGHT

30 Traditional owner of traditional cultural right shall also be the holder of a moral right

A traditional owner of a traditional cultural right shall be the holder of a moral right.

31 Meaning of a moral right

A moral right is the:

- (a) right of attribution of ownership in relation to their traditional knowledge or traditional cultural expressions;
- (b) right not to have ownership of traditional knowledge or traditional cultural expressions falsely attributed to a traditional owner; and
- (c) right not to have traditional knowledge or traditional cultural expressions subjected to derogatory treatment.

32 Moral right exists in perpetuity

A moral right of a traditional owner shall exist in perpetuity.

33 Moral right not transferrable or waivable

A moral right shall not be transferred, alienated, sold or waived.

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**PART 6 — OBTAINING FREE, PRIOR AND INFORMED CONSENT FROM
TRADITIONAL OWNERS FOR USE OF TRADITIONAL KNOWLEDGE OR
TRADITIONAL CULTURAL EXPRESSIONS**

**DIVISION 1 — APPLICATIONS FOR USE OF TRADITIONAL KNOWLEDGE OR
TRADITIONAL CULTURAL EXPRESSIONS AND IDENTIFYING TRADITIONAL OWNERS**

**34 Free, prior and informed consent required for use of
traditional knowledge or traditional cultural expressions**

- (1) A person who is not a traditional owner of a cultural right, shall obtain free, prior and informed consent of a traditional owner prior to the use of such traditional knowledge or traditional cultural expressions.
- (2) Despite subsection (1), a person may use traditional knowledge or traditional cultural expressions for any of the following purposes without the free, prior and informed consent of the traditional owner:
 - (a) teaching;
 - (b) criticism or review;
 - (c) reporting news or events;
 - (d) judicial proceedings; or
 - (e) incidental use.
- (3) A person who has obtained free, prior and informed consent from a traditional owner or a person who uses traditional knowledge or traditional cultural expressions under subsection (2) shall ensure to acknowledge the traditional owner in a manner that sufficiently identifies the traditional owner of the traditional cultural right which has been exercised by such person.

**35 Application process for obtaining free, prior and informed
consent from traditional owners**

- (1) An application to obtain the free, prior and informed consent of the traditional owners to use the traditional knowledge or traditional cultural expressions shall:
 - (a) be in the prescribed form;
 - (b) specify the way in which the applicant proposes to use the traditional knowledge or traditional cultural expressions;
 - (c) state clearly the purpose for which that use is intended; and
 - (d) be accompanied by the prescribed fee.
- (2) The Authority shall finalise the application in accordance with this Part within 21 days of receipt of the application.
- (3) Where the Authority does not finalise the application within the period mentioned in subsection (2), the traditional owners are deemed not to have consented to the proposed use.

36 Notification of traditional owners and the public

- (1) The Authority shall:

- (a) give a copy of the application to those persons (if any) who the Authority is satisfied are the traditional owners of the traditional knowledge or traditional cultural expressions to which the application relates;
 - (b) publish a copy of the application in a gazette notice or any other media outlet stating how interested persons may obtain a copy of the application; and
 - (c) where appropriate, broadcast details of the application on radio or television stating how interested persons may obtain a copy of the application.
- (2) Any person who claims to be a traditional owner of the traditional knowledge or traditional cultural expressions to which the application relates shall advise the Authority either orally or in writing, within 28 days after the application is published or broadcasted (whichever is the later).
- (3) The Authority shall record in writing the details of any oral or written advice given under subsection (2).

37 Identification of traditional owners

- (1) Where the Authority is satisfied that it has identified all of the traditional owners, the Authority shall make a written determination containing such details as to identify the traditional owners.
- (2) The Authority shall:
- (a) publish a copy of the determination in a gazette notice or any other media outlet; and
 - (b) where appropriate, broadcast details of the determination on radio or television.

38 Uncertainty or dispute about ownership

- (1) Where the Authority is not satisfied that it has identified all of the traditional owners or that there is a dispute about ownership, the Authority shall refer the matter to the persons concerned to be resolved according to customary practice and usage or such other means as agreed to by the parties.
- (2) Where all of the traditional owners have been identified in accordance with customary practices and usage or such means as agreed to, the traditional owners shall advise the Authority, and the Authority shall make a written determination containing such details identifying the traditional owners.
- (3) The Authority shall:
- (a) publish a copy of the determination in a gazette notice or any other media outlet; and
 - (b) where appropriate, broadcast details of the determination on radio or television.

39 No traditional owners or no agreement about ownership

- (1) Where the Authority is satisfied that:
- (a) no traditional owners can be identified; or
 - (b) no agreement has been reached on ownership within the period mentioned under Section 35(2),
- the Authority may, after consultation with the Minister, make a

determination that the Authority is the traditional owner of the traditional knowledge or traditional cultural expressions concerned for the purposes of this Act.

- (2) Where the Authority enters into an authorised user agreement, any monetary or non-monetary benefits arising under the agreement shall be used for traditional cultural development purposes.

DIVISION 2 — AUTHORISED USER AGREEMENTS

40 Decision of the traditional owner

- (1) Upon receiving applications referred by the Authority, the traditional owner shall decide whether:
 - (a) to accept the application and to enter into negotiations for a written authorised user agreement in relation to the application; or
 - (b) to reject the application.
- (2) The traditional owner shall advise the Authority of his or her decision orally or in writing.
- (3) Upon receiving the traditional owner's decision, the Authority shall then advise the applicant in writing of the traditional owner's decision.

41 Proposed agreement to be referred to the Authority

- (1) Before entering into an authorised user agreement, the traditional owners shall refer the proposed agreement to the Authority for its comments on the proposed terms and conditions of the agreement.
- (2) The Authority may request the applicant and the traditional owners for a meeting to discuss the proposed agreement where the Authority is, after reviewing the proposed agreement, satisfied that:
 - (a) the traditional owners do not have sufficient information to make a full and informed decision about the proposed terms and conditions of the agreement; or
 - (b) the proposed terms and conditions of the agreement do not adequately protect the traditional knowledge or traditional cultural expressions of the traditional owners.
- (3) The traditional owners may accept, reject or modify any comments made by the Authority in relation to the proposed agreement.

42 Terms and conditions of the authorised user agreement

An authorised user agreement shall include the following terms and conditions:

- (a) sharing of financial and other benefits arising from the use of the traditional knowledge or traditional cultural expressions;
- (b) compensation, fees, royalties or other payments for the use;
- (c) whether the use will be exclusive or non-exclusive;
- (d) duration of the use to be allowed and rights of renewal;
- (e) disclosure requirements in relation to the use;
- (f) the possible sharing by the traditional owners of any intellectual property rights arising from the use of the traditional knowledge or traditional cultural expressions;
- (g) access arrangements for the traditional owners;
- (h) education and training requirements for the applicant;

- (i) controls on publication;
- (j) specify whether the rights arising under the agreement can be assigned;
- (k) choice of law in relation to disputes under the agreement; and
- (l) respect for moral rights of the traditional owners.

43 Authorised user agreement and free, prior and informed consent

- (1) Where a person who is a prospective user and the traditional owner enter into an authorised user agreement, the traditional owner is deemed to have given his or her free, prior and informed consent to the proposed use.
- (2) The traditional owner shall advise the Authority and forward to it a copy of the final agreement.
- (3) The Authority shall keep a register of authorised user agreements.
- (4) The register shall be in such form and contain such information as the Authority determines.

44 No authorised user agreement reached

- (1) Where the traditional owner and the applicant cannot agree on the terms and conditions of an agreement in relation to the application, the traditional owner shall advise the Authority orally or in writing.
- (2) The Authority shall advise the applicant in writing that the traditional owners have rejected the proposed authorised user agreement.
- (3) The Authority shall record in writing the details of any oral or written advice given under subsection (1).

45 Exception to application process under Section 35

- (1) Nothing prevents a prospective user of traditional knowledge or traditional cultural expressions from obtaining the free, prior and informed consent of the traditional owner without applying to the Authority under Section 35.
- (2) The prospective user shall advise the Authority that the prospective user has sought the free, prior and informed consent of the traditional owners.
- (3) The prospective user shall provide the Authority with a copy of the proposed authorised user agreement between the prospective user and the traditional owners for comment, and advice about other prospective traditional owners.
- (4) The prospective user shall provide a copy of the signed authorised user agreement to the Authority to be entered in the register within 28 days after the agreement comes into force.
- (5) Where a prospective user and the traditional owner enters into an authorised user agreement, the traditional owner is deemed to have given his or her free, prior and informed consent to the proposed use.
- (6) Where a copy of the proposed authorised user agreement is not provided under subsection (3), the authorised user agreement is rendered null and void.

[The next page is 891,301]

**PART 7 — REPRESENTATION OF NAURUAN TRADITIONAL
KNOWLEDGE AND TRADITIONAL CULTURAL EXPRESSION OVERSEAS**

**46 Minister to approve persons or groups to represent Nauruan
traditional knowledge and traditional cultural expressions
overseas**

The Minister on the recommendation of the Authority shall approve persons, community or a group to represent Nauru overseas in relation to the showcasing of Nauruan traditional knowledge and traditional cultural expression.

[The next page is 891,501]

PART 8 — ENFORCEMENT

DIVISION 1 — OFFENCES

47 Offence in relation to traditional cultural rights

Where:

- (a) a person makes a non-customary use of traditional knowledge or traditional cultural expression (whether or not such use is of a commercial nature); and
- (b) the traditional owner has not given his or her free, prior and informed consent to that use;

the person commits an offence and shall be liable to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months, or both.

48 Offence in relation to moral rights

Where:

- (a) a person does an act or makes an omission in relation to traditional knowledge or traditional cultural expression that is inconsistent with the moral rights of the traditional owner of that traditional knowledge or traditional cultural expression; and
- (b) the traditional owner has not given his or her free, prior and informed consent to the act or omission;

the person commits an offence and shall be to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months, or both.

49 Offence in relation to ‘sacred’ or ‘secret’ material

Where a person uses sacred or secret traditional knowledge or traditional cultural expression other than in accordance with a customary use, the person commits an offence and shall be liable to a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years, or both.

50 Offences in relation to importation and exportation

(1) Where:

- (a) a person imports an article or other thing into the Republic that relates to traditional knowledge or traditional cultural expressions of the Republic; and
- (b) the person knew, or ought reasonably to have known, that the article or thing would have contravened the traditional cultural rights or the moral rights of the traditional owner had it been created in the Republic;

the person commits an offence and shall be liable to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months, or both.

(2) Where:

- (a) a person exports traditional knowledge or traditional cultural expression and the export is a non-customary use (whether or not such use is of a commercial nature); and

- (b) the traditional owners have not given their free, prior and informed consent to the export of the traditional knowledge or traditional cultural expressions;
- the person commits an offence and shall be liable to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months, or both.

51 Misrepresentation of traditional knowledge and traditional cultural expressions

- (1) A person shall not, in any public or private communication, representation, or publication, falsely attribute, distort, or misrepresent any aspect of Nauruan traditional knowledge or traditional cultural expressions.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable to a fine not exceeding \$5,000 or a term of imprisonment not exceeding 12 months or both.
- (3) This section shall not apply to bona fide academic, journalistic, or artistic works that engage with traditional knowledge or traditional cultural expression in a respectful and accurate manner, provided that such works include appropriate attribution and context.

DIVISION 2 — CIVIL ACTIONS

52 Civil claims

- (1) Where:
 - (a) a person makes a non-customary use of traditional knowledge or traditional cultural expression (whether or not such use is of a commercial nature); and
 - (b) the traditional owner has not given his or her free, prior and informed consent to that use;the traditional owner may institute proceedings against the person in the Supreme Court seeking all or any of the relief set out under Section 53.
- (2) Where:
 - (a) a person does an act or makes an omission in relation to traditional knowledge or traditional cultural expression that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or traditional cultural expression; and
 - (b) the traditional owner has not given his or her free, prior and informed consent to the act or omission;the traditional owner may institute proceedings against the person in the Supreme Court seeking all or any of the relief set out under Section 53.

53 Remedies

- (1) The Supreme Court may grant all or any of the following in relation to proceeding instituted under Section 52:
 - (a) an injunction;
 - (b) damages for loss resulting from the unauthorised use;
 - (c) a declaration that the traditional cultural right of the traditional owner has been contravened;
 - (d) an order that the defendant make a public apology for the contravention;

- (e) an order that any false attribution of ownership, or derogatory treatment, of the traditional knowledge or traditional cultural expression cease or be reversed;
 - (f) an order for an account for profits;
 - (g) an order for the seizure of any object made, imported or exported contrary to this Act; or
 - (h) such other orders as the Court considers appropriate in the circumstances.
- (2) The Court in deciding what relief is to be granted may consider all or any of the following:
- (a) whether the defendant was aware or ought reasonably to have been aware of the traditional cultural rights and moral rights of the traditional owners;
 - (b) the effect on the honour or reputation of the traditional owner resulting from the unauthorised use;
 - (c) anything done by the defendant to mitigate the effects of the unauthorised use;
 - (d) any cost or difficulty that may have been associated with identifying the traditional owner;
 - (e) any cost or difficulty in ceasing or reversing any false attribution of ownership, or derogatory treatment, of the traditional knowledge or traditional cultural expression; or
 - (f) whether the parties have undertaken any other action to resolve the dispute.

DIVISION 3 — DEFENCES AND OTHER MATTERS

54 Defences

It is a defence to an offence under Section 47 or 48, or an action under Section 52, if a determination had been published under Section 37 and the traditional owner specified in that determination had given his or her free, prior and informed consent to the use in question.

55 Other mechanisms to resolve disputes

Nothing in this Part prevents the traditional owner or the other person concerned from attempting to resolve a dispute using all or any of the following:

- (a) mediation;
- (b) alternative dispute resolution procedures; or
- (c) customary practices and usage.

56 Other rights of action and remedies

This Part does not affect any rights of action or other remedies, whether civil or criminal, provided for under other written law.

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PART 9 — MISCELLANEOUS

57 Protection from liability

The Minister, members of the Authority, Director and members of the staff are not liable for any loss or damage arising from or be subject to any criminal prosecution and civil claims for the performance of a function or exercise of a power, done in good faith under this Act or any other written law.

58 Jurisdiction of the District Court

The District Court shall have jurisdiction to hear, try and determine any proceedings instituted in respect of any contravention or commission of an offence under this Act.

59 Confidentiality

- (1) The Minister, members of the Authority, Director and members of the staff shall keep information confidential where he or she accesses in the course of performing his or her functions or exercise of his or her powers under this Act.
- (2) Upon authorisation by the Chairperson, information may be disclosed for the purpose of furthering the objectives of this Act, required by a law enforcement Authority or required by an order of the court.

60 Regulations

- (1) The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the Cabinet may make regulations to provide for:
 - (a) Code of Conduct of the Authority;
 - (b) any other action in relation to the use of traditional knowledge or traditional cultural expression;
 - (c) application forms; and
 - (d) fees.

61 Recognition of other laws

In accordance with reciprocal arrangements, this Act may provide the same protection to traditional knowledge and traditional cultural expressions originating in other countries or territories as is provided to traditional knowledge and traditional cultural expressions originating in the Republic.

62 Consequential Amendment

The *National Heritage Act 2017* is amended as follows:

- (a) Section 3 is amended as follows:
 - (i) for the definition of ‘site’ delete the word ‘and’;
 - (ii) for the definition of ‘war relic’ delete the full stop ‘.’ and substitute with the following ‘; and’; and
 - (iii) insertion of the following definition after the definition of ‘war relic’:

‘World Heritage Convention’ means the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, adopted on the 16th November 1972.’;

(b) Section 7(1) amended as follows:

- (i) for paragraph (g), delete the word ‘and’ at the end of the paragraph;
- (ii) for paragraph (h), delete the full stop ‘.’ and substitute with a semicolon ‘; and’; and

(iii) by inserting the following new paragraphs after paragraph (h):

- ‘(i) to keep and maintain the National Heritage Register, including the registration of National Heritage Sites and objects of heritage; and
- (j) to ensure compliance with the World Heritage Convention.’; and

(c) Section 26 deleted and substituted as follows:

‘26 Regulations

The Cabinet may make regulations:

- (a) prescribing all matters necessary or convenient to give effect to this Act; and
- (b) to prescribe matters in relation to giving effect to the World Heritage Convention.’.