
Preservation of Sites and Artefacts (Amendment) Act 2008

Not Yet Commenced

REPUBLIC OF VANUATU

PRESERVATION OF SITES AND ARTEFACTS (AMENDMENT) ACT NO. 21 OF 2008

Arrangement of Sections

1. Amendment
2. Commencement

REPUBLIC OF VANUATU

PRESERVATION OF SITES AND ARTEFACTS (AMENDMENT) ACT NO. 21 OF 2008

An Act to amend the Preservation of Sites and Artefacts Act [CAP 39].

Be it enacted by the President and Parliament as follows:

1 Amendment

The Preservation of Sites and Artefacts Act [CAP 39] is amended as set out in the Schedule.

2 Commencement

This Act commences on the date on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF THE PRESERVATION OF SITES AND ARTEFACTS ACT [CAP 39]

1 Long Title

Delete "or artistic interest", substitute ", archaeological or artistic significance"

2 Section 1

Insert the following definitions in their correct alphabetical positions:

"classified object means an object classified under section 2A;

classified site means a site classified under section 2;

Council means the Vanuatu National Cultural Council;

inspector means a person appointed as an inspector under section 5A;

object includes any locally manufactured object or any foreign manufactured object such as war relics and objects from the colonial era."

3 Part 2

Repeal sections 2, 3, 4 and 5, substitute

"2. Classification of sites

(1) Subject to section 3, the Minister may, after consultation with the Council, classify as national heritage any site of:

- (a) historical significance; or
- (b) archaeological significance; or
- (c) ethnological significance; or
- (d) artistic significance.

(2) Any object that is fixed to the soil on a classified site is to be considered immovable and is taken to be classified as national heritage by virtue of the classification of such site.

(3) The Vanuatu Cultural Center must keep a register of the sites classified as national heritage.

(4) The Vanuatu Cultural Center must publish in the Gazette a notice of any site that is classified as national heritage.

(5) The classification of a site is subject to such conditions as is specified in the instrument of classification.

(6) The classification of a site must be made by instrument in writing.

2A. Classification of objects

(1) Subject to section 3, the Minister may, after consultation with the Council, classify as national heritage any object of:

- (a) historical significance; or
- (b) archaeological significance; or
- (c) ethnological significance; or
- (d) artistic significance,

that is in the possession of any person domiciled in or visiting Vanuatu.

(2) The Vanuatu Cultural Center must keep a register of the objects classified as national heritage.

(3) The Vanuatu Cultural Center must publish in the Gazette a notice of any object that is classified as national heritage.

(4) The classification of an object is subject to such conditions as are specified in the instrument of classification.

(5) The classification of an object must be made by instrument in writing.

3. Minister to inform owner of classification of site or object

(1) The Minister must notify in writing the owner of any site or object that he or she intends to classify as national heritage, including any conditions of the classification.

(2) The owner must, within 3 months after the date of the notification, make to the Minister any verbal or written representations that he or she intends to make in relation to the proposed classification.

(3) If the owner fails to make a representation to the Minister within the 3 month period, the owner is taken to have consented to the proposed classification, including the conditions of the classification, and the Minister must, within 2 months after the expiry of the 3 month period take the appropriate steps to classify the site or object.

(4) If the owner makes a representation to the Minister within the 3 month period, the Minister must take the representation into account in deciding whether or not to classify the site or object.

(5) If, after considering the owner's representation, the Minister is still of the view that the site or object should be classified as national heritage, the Minister must, within 2 months after the expiry of the 3 month period take the appropriate steps to classify the site or object.

(6) A person must not modify or destroy the site or object during the 5 month period.

3A. Classification of site creates overriding rights and interests in land

(1) The classification of a site by the Minister under section 2 is deemed to be an instrument

creating overriding rights and interests in land as provided for by section 17 of the Land Leases Act [CAP 163], and unless the contrary is expressed in the register within the meaning of that Act, the proprietor of a registered lease holds the lease subject to the overriding rights and interests so created by the classification of the site, without such rights and interests being noted in the register.

(2) For the purposes of the registration of land under the Land Leases Act [CAP 163], any classified site must have its survey plan authenticated by the Director of the Department responsible for land surveys as provided for under the Land Surveyors Act [CAP 175].

(3) For the purposes of subsections (1) and (2), the Council is to provide in writing to the Director of the Department responsible for land surveys the cartographic coordinates (UTM WGS84) containing the location of the classified site.

4. Classified site or object not to be destroyed modified or undergo deterioration

(1) A person must not modify or destroy a classified site or classified object unless the Minister has given his or her prior written approval under section 3.

(2) A person in possession of a classified site or classified object must inform the Council in writing of:

- (a) any proposed destruction or modification of the classified site or classified object; or
- (b) any thing that is likely to affect the physical condition or location of the classified site or classified object; or
- (c) any proposed change of ownership of the classified site or classified object.

(3) In deciding whether to approve any proposed modification or destruction of a classified site or classified object, the Minister must act on the advice of the Council.

(4) The Minister may approve the modification or destruction of a classified site or classified object subject to such conditions as are specified in the approval.

(5) The Minister must give to the owner of a classified site or classified object written reasons for his or her decision.

(6) A person in possession of a classified site or classified object must maintain the classified site or classified object so as to prevent it undergoing any deterioration.

(7) If anything occurs that affects the physical condition of the classified site or classified object, the person in possession of the classified site or classified object must ensure so far as reasonably practicable that the national heritage value of such site or object is not significantly affected.

(8) None of the following invalidates the classification of a site or object:

- (a) the destruction or modification of the classified site or classified object;
- (b) any thing that affects the physical condition of the classified site or classified object;
- (c) any change of ownership of the classified site or classified object;

(d) any deterioration of the classified site or classified object.

5. Minister's obligation for assistance

To assist any person in possession of a classified site or classified object to comply with section 4, the Minister may, if requested by the person, provide in such amount as the Minister considers reasonably necessary either or both of the following:

- (a) financial assistance;
- (b) building materials."

4 After Part 2

Insert

"PART 2A - APPOINTMENT OF HERITAGE INSPECTORS

5A. Heritage Inspectors

- (1) The Council is to appoint in writing, suitable persons as inspectors to carry out assessments of classified sites and classified objects, and any unclassified sites or objects that could be of national heritage value.
- (2) The Council may include in the instrument of appointment any or all of the following:
 - (a) any limit to the area in which the inspector may carry out his or her duties;
 - (b) any restrictions on the powers an inspector may exercise;
 - (c) an authority for the inspector to give instructions in relation to a particular classified site or classified object, or any other site or object.
- (3) The Council is to advise the Minister following the appointment of an inspector.
- (4) The Council must provide an inspector with an identification card.
- (5) The Council may set out in the instrument of appointment of an inspector any other terms and conditions of appointment.

5B. Powers of an inspector

- (1) For the purposes of this Act, an inspector may do any or all of the following:
 - (a) enter, search or inspect any land, site or object which he or she reasonably believes is of national heritage value;
 - (b) enter, search and inspect any land, premises, vehicle, vessel or aircraft for the purposes of determining whether an offence under this Act has been or is being committed;
 - (c) enter, search and inspect any land, premises, vehicle, vessel or aircraft to ensure that the provisions of this Act have been or are being complied with;

- (d) detain, open, search and inspect any packages intended for export (including postal mail and packages transported by courier services);
- (e) search and examine any baggage, package or other item carried by a person;
- (f) stop and search any person intending to depart from Vanuatu as a passenger, master, commander, or crew member of a ship or aircraft;
- (g) seize any object, including any artefact, which he or she reasonably believes is of national heritage value and, if not seized, is likely to be destroyed.

(2) If an inspector is authorised by the Council to give instructions in relation to a particular site or object (whether or not a classified site or classified object), the inspector may, for the purpose of averting any destruction to the site or object, give instructions to any person visiting the site or in the immediate vicinity of the site or object.

(3) A person must comply with an instruction given by an inspector.

(4) An inspector must report to the Council any object seized by the inspector.

(5) In the exercise of powers under this Act, an inspector may be assisted by such persons as are, in the inspector's opinion, necessary or desirable in the circumstances.

(6) The powers conferred by this section must not be exercised contrary to a direction of the Council.

5C. Inspector to show identification card upon request

An inspector must, at the request of a person in relation to whom the inspector has exercised, or intends to exercise, powers under this Act, produce the inspector's identification card."

5 Section 6

Repeal the section, substitute

"6. Right of pre-emption

(1) Any person who intends to buy or sell a site or object which is:

- (a) of historical, ethnological, archaeological, or artistic significance and which possesses a special value either as a result of any ceremonial use that has been made of it; or
- (b) more than 10 years old,

must notify the Council in writing prior to the purchase or sale and must obtain the prior written approval of the Council.

(2) The Council must within 21 days after receiving a written notice:

- (a) approve the sale or purchase of the site or object; or
- (b) exercise its right of pre-emption over the site or object.

(3) If the Council fails to approve the sale or purchase within the 21 day period, it is taken to have approved the sale or purchase of the site or object.

(4) If the Council fails to exercise its right of pre-emption within the 21 day period, the Council is taken to have waived its right of pre-emption.

(5) The parties involved in the sale or purchase of the site or object must not sell or purchase the site or object within the 21 day period."

6 Section 7

Repeal the section, substitute

"7. Prohibition on export of classified objects and certain other objects

(1) Subject to subsection (3), a person must not export a classified object or an object referred to in subsection 6(1).

(2) A person proposing to export a classified object or an object referred to in subsection 6(1) must apply in writing to the Council for the Council's prior approval to the export.

(3) The Council may in writing approve the export of the classified object or object referred to in subsection 6(1) if the Council is satisfied that:

(a) the object is destined for an organization of a genuine cultural nature and is to be returned to Vanuatu at a specific date; or

(b) the object is destined for a University for study purposes and is to be returned to Vanuatu at a specific date; or

(c) the exporter certifies in writing that the object:

(i) is his or her personal property; and

(ii) is not to be sold and will be returned to Vanuatu at a specific date; or

(d) the object is of no significant value that would warrant the prevention of its export.

(4) The Council must provide to the person proposing to export a classified object or an object referred to in subsection 6(1) written reasons for its decision."

7 Section 8 (heading)

Delete "Port Vila", substitute "Vanuatu"

8 Subsection 8(1)

Repeal the subsection, substitute

"(1) The Council may retain for the benefit of the Vanuatu Cultural Centre any object for which an application for an approval for export has been made under section 7 if the Council:

(a) is not satisfied of the reasons for exporting the object: and

(b) has not approved the export of the object."

9 Subsection 8(2)

Delete "Minister" substitute "Council"

10 Subsection 9(1)

Delete "20,000" substitute, "50,000,000 or a term of imprisonment of not more than 6 years, or both."

11 Subsection 9(2)

Delete "200,000", substitute "50,000,000 or a term of imprisonment of not more than 6 years, or both."

12 At the end of section 9

Add

"(3) For the purposes of this Act, a person commits an offence against a provision of this Act if the person contravenes or fails to comply with that provision."

13 Section 10

Delete all the words from and including "Port Vila Cultural Centre" to and including "object", substitute "Vanuatu Cultural Centre of any site or object"

14 Section 11

Delete "The", substitute "After consultation with the Council, the"

15 Section 12

Delete "District Commissioners", substitute "The Local Government Councils, the Chiefs, the Director of the Department responsible for livestock and quarantine"