

National Cultural Property (Preservation) Act 1965

Chapter 156.

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 156.

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ARRANGEMENT OF SECTIONS.

1. Interpretation.
2. Delegation.
3. Exemptions.
4. Declaration of national cultural property.
5. Proclaimed cultural property.
6. Compulsory acquisition of movables.
7. Compulsory acquisition of immovables.
8. Power to prohibit or restrict acquisition, etc.
9. Destroying national cultural property.
10. Power of examination, etc.
11. Photographs, etc.
12. Registration.
13. Notification of whereabouts, etc.
14. Repair, etc.
15. Export of national cultural property.
16. Prohibited exports.
17. Prohibited imports.
18. Saving of other powers.
19. General appeal.
20. Discoveries of certain things to be reported.
21. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

National Cultural Property (Preservation) Act 1965,

Being an Act relating to the preservation and protection of objects of cultural or historical importance to Papua New Guinea, and for other purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“the Commission” means the National Cultural Commission established under the *National Cultural Commission Act 1994*;

^[1]**“the Museum”** means the National Museum and Art Gallery originally established as the Papua New Guinea Public Museum and Art Gallery established under the *Public Museums and Art Galleries Act* (Chapter 158) (repealed) and continued in establishment by Section 18 of the *Cultural Development Act 1986* and by the *National Museum and Art Gallery Act 1992*;

“national cultural property” means any property, movable or immovable, of particular importance to the cultural heritage of the country, and in particular (but without limiting the generality of the foregoing) includes—

(a) any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of any of the peoples of the country, past or present; and

(b) any mineral specimen or fossil or mammal remains of scientific or historic interest to the country; and

(c) any other collection, object or thing, or any collection, object or thing of a class, declared to be national cultural property under Section 4; and

(d) any collection of national cultural property;

“proclaimed cultural property” means any national cultural property the subject of a notice under Section 5;

“the regulations” means any regulations made under this Act;

^[2]**“this Act”** includes the regulations;

PART II. – ADMINISTRATION.

2. DELEGATION.

(1)^[3] ^[4]The Commission may, by instrument under their seal, delegate to a person all or any of their powers and functions under this Act (except this power of delegation).

(2)^[5] ^[6]A person aggrieved by an act of, or a decision on a matter by, a delegate of the Commission may require that the matter be referred to the Commission, and in that event the act or decision shall not be deemed to be the act or decision of the Council until confirmed by them.

3. EXEMPTIONS.

[7]The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, exempt–

- (a) any collection, object or thing; or
- (b) any collection, object or thing of a specified class; or
- (c) a person, body or authority,

from all or any of the provisions of this Act, subject to such conditions as are specified in the notice.

4. DECLARATION OF NATIONAL CULTURAL PROPERTY.

[8]The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, declare–

- (a) any collection, object or thing; or
- (b) any collection, object or thing of a specified class,

to be national cultural property.

5. PROCLAIMED CULTURAL PROPERTY.

[9]The Head of State, acting on advice given after receiving a report from the Commission, may, by notice in the National Gazette, declare any national cultural property to be proclaimed cultural property for the purposes of this Act.

PART III. – NATIONAL CULTURAL PROPERTY GENERALLY.

6. COMPULSORY ACQUISITION OF MOVABLES.

(1)^[10] ^[11]The Head of State, acting on advice given after receiving a report from the Commission, may, by notice to the owner or the person in charge or apparently in charge of any movable national cultural property, compulsorily acquire the property on behalf of the State.

(2) Where any national cultural property is acquired under Subsection (1), the State is liable to pay to the owner compensation in such amount as is agreed on between the Head of State, acting on advice, and the owner or, in default of agreement, as is determined by action in a court of competent jurisdiction or, if the State and the owner so agree, by arbitration.

7. COMPULSORY ACQUISITION OF IMMOVABLES.

The purpose of this Act and of the preservation of and protection of national cultural property generally is a public purpose within the meaning of the *Land Act 1996*.

8. POWER TO PROHIBIT OR RESTRICT ACQUISITION, ETC.

(1)^[12] ^[13]The Head of State, acting on advice given after receiving a report from the Council, may, by notice in the National Gazette, prohibit or restrict the acquisition or transfer of any national cultural property specified in the notice.

(2) A person who acquires or transfers any national cultural property in contravention of a notice under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K400.00.

9. DESTROYING NATIONAL CULTURAL PROPERTY.

(1) A person who, without lawful and reasonable excuse (proof of which is on him) wilfully destroys, damages or defaces any national cultural property, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(2) A person who, by force, threats, fraud, misrepresentation, undue influence or in any other manner, obtains the destruction, damaging, defacing, confiscation or yielding up of any national cultural property is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months.

10. POWER OF EXAMINATION, ETC.

(1)^[14] ^[15]Subject to this section, for the purposes of this Act the Commission or a person authorized by the Commission for the purpose may, at any reasonable time and with or without assistants—

(a) enter on and search any land, building, aircraft, vessel or vehicle on or in which there is reasonable cause to believe that any national cultural property or suspected national cultural property is or may be; and

(b) require a person to furnish information concerning, or to produce for inspection, any national cultural property or suspected national cultural property in his possession or under his control; and

(c) seize and detain for further examination any national cultural property or suspected national cultural property.

(2) A person who—

(a)^[16] hinders or obstructs the Commission or a person authorized by the Commission in the exercise of their or his powers under Subsection (1); or

(b) refuses or fails without lawful and reasonable excuse (proof of which is on him), to furnish information or to produce any property when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

Default penalty: A fine not exceeding K10.00.

(3) The power of entry and search conferred by Subsection (1)(a) shall not be exercised except under a warrant in the prescribed form issued by a justice on being satisfied as to the matter specified in that paragraph.

(4) Unless earlier acquired under this Act, any property seized and detained for examination under Subsection (1)(c) shall be returned to the person or place from whom or from which it was seized as soon as may reasonably be after the seizure, and where the property has suffered damage as a result of the seizure or examination or during the detention, the State is liable to pay to the owner compensation assessed in the same manner as under Section 6(2).

11. PHOTOGRAPHS, ETC.

(1)^[17] ^[18]The Council may require the person having or appearing to have the custody or control of any national cultural property to allow the Council or a person authorized by them for the purpose to take or make a sketch, photograph, model, copy or facsimile of that property, and for that purpose may require the loan of and may remove the property.

(2)^[19] ^[20]The cost of taking or making a sketch, photograph, model, copy or facsimile referred to in Subsection (1) shall be borne by the Commission.

(3)^[21] ^[22]A person who hinders or obstructs the Commission or a person authorized by the Commission in the exercise of their or his powers under Subsection (2), is guilty of an offence.

Penalty: A fine not exceeding K200.00.

PART IV. – PROCLAIMED CULTURAL PROPERTY.

12. REGISTRATION.

^[23]The Commission shall, as far as practicable, maintain, in such manner and form as they determine, a register of all proclaimed cultural property, whether within or outside the country.

13. NOTIFICATION OF WHEREABOUTS, ETC.

Where any national cultural property is declared to be proclaimed cultural property under Section 5, the owner and the person in whose custody or control the property is at the date of the declaration, and any other person into whose possession or control the property subsequently comes, must—

(a)^[24] immediately notify the Commission in the prescribed form, giving the prescribed particulars of the nature, situation and condition of the property; and

(b)^[25] immediately notify the Commission from time to time of any change in the situation or condition of the property; and

(c)^[26] in the case of a collection that is proclaimed cultural property—give to the Commission at least one month's written notice before breaking up the collection or disposing of any part of it; and

(d)^[27] make the property available at all reasonable times for examination by the Commission or a person authorized by them for the purpose.

Penalty: A fine not exceeding K400.00.

Default penalty: A fine not exceeding K20.00.

14. REPAIR, ETC.

^[28]The Commission may, out of moneys lawfully available, repair, renovate or preserve, or contribute to the repair, renovation or preservation of, any proclaimed cultural property.

PART V. – PROHIBITED EXPORTS AND IMPORTS.

15. EXPORT OF NATIONAL CULTURAL PROPERTY.

(1)^[29] ^[30]A person who, without the written consent of the Commission, exports or removes from the country any national cultural property, is guilty of an offence.

Penalty: A fine not exceeding K400.00.

(2) A consent for the purposes of Subsection (1) may be given, in relation to any national cultural property or to a class of national cultural property, by notice in the National Gazette.

(3)^[31] ^[32]A consent under this section may be made subject to such conditions as the Commission think proper, including a condition that the owner of the national cultural property or some other person provide, to the satisfaction of the Commission and free of charge, any sketch, photograph, model, copy or facsimile that the Commission may require.

16. PROHIBITED EXPORTS.

Any national cultural property exported or attempted to be exported in contravention of Section 15 or of the conditions of any consent under that section is a prohibited export within the meaning of the *Customs Act 1951*.

17. PROHIBITED IMPORTS.

(1) Where the Head of State, acting on advice, is satisfied that arrangements have been made or will be made under the law in force in some place outside the country under which any national cultural property that is a prohibited export from the country under Section 16 is a prohibited import into that place, the Head of State, acting on advice, may, by notice in the National Gazette, declare that the provisions of this section apply in relation to that place.

(2) Where the Comptroller of Customs is satisfied that—

(a) a collection, article or thing is imported or brought into the country from a place in relation to which this section applies; and

(b) the export of the collection, article or thing, or of collections, articles or things of a class to which the collection, article or thing belongs or apparently belongs, from that place was prohibited under the law of that place for reasons essentially similar to the reasons for the prohibition of export contained in this Act; and

(c) the export was in contravention or was apparently in contravention of that law,

that collection, article or thing is a prohibited import within the meaning of the *Customs Act 1951* until such time as the Comptroller of Customs is satisfied that the laws in force in the place from which it was exported have been complied with, or their application to the collection, article or thing has been waived by competent authority.

(3) A collection, article or thing that is a prohibited export by virtue of Subsection (2) may, if the Head of State, acting on advice, so directs, be seized, without compensation, by the State and forwarded to the appropriate authorities in the place from which it was exported.

PART VI. – MISCELLANEOUS.

18. SAVING OF OTHER POWERS.

^[33]The powers and functions of the Commission under this Act are in addition to, and not in derogation of or substitution for, the powers and functions of the Commission under any other law.

19. GENERAL APPEAL.

^[34]Subject to Section 6(2), a person aggrieved by a decision of the Commission under this Act may, within the prescribed time and in the prescribed manner, appeal to the Head of State, acting on advice, whose decision is final.

20. DISCOVERIES OF CERTAIN THINGS TO BE REPORTED.

(1)^[35] A person who discovers—

- (a) a cave or other place in which ancient remains, human or other, are to be found; or
- (b) a carving, painting or other representation on rock or in a cave; or
- (c) a deposit of ancient pottery or historical remains; or
- ^[36](d) a place used in former times as a ceremonial or burying ground,

must immediately give to the Commission particulars of the discovery.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K2.00.

(2) It is a defence to a charge under Subsection (1) if the defendant proves—

- (a) that he did not know that the subject-matter of the charge was a matter or thing referred to in that subsection; or
- (b) any other lawful and reasonable excuse.

(3)^[37] ^[38]A person who, without lawful and reasonable excuse (proof of which is on him), wilfully or negligently defaces, damages, uncovers, exposes, excavates or otherwise interferes with a place or object referred to in Subsection (1) without the written consent of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K100.00.

21. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties of fines not exceeding K40.00, and default penalties of fines not exceeding K2.00, for offences against the regulations.

Office of Legislative Counsel, PNG

^[1] Section 1 (definition of “the Museum”) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (a)(ii). The *Cultural Development Act* 1986 was repealed and replaced by the *Tourism Development Corporation Act* 1990 (No. 10 of 1990).

^[2] Section 1 (definition of “the Trustees”) repealed by the *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (a)(iii).

^[3] Section 2(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[4] Section 2(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[5] Section 2(2) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[6] Section 2(2) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[7] Section 3 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[8] Section 4 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[9] Section 5 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[10] Section 6(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[11] Section 6(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[12] Section 8(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[13] Section 8(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[14] Section 10(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[15] Section 10(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[16] Section 10(2)(a) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[17] Section 11(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

^[18] Section 11(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).

- ^[19] Section 11(2) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[20] Section 11(2) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[21] Section 11(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[22] Section 11(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[23] Section 12 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[24] Section 13(a) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[25] Section 13(b) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[26] Section 13(c) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[27] Section 13(d) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[28] Section 14 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[29] Section 15(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[30] Section 15(1) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[31] Section 15(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[32] Section 15(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[33] Section 18 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[34] Section 19 amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[35] Section 20(1)(d) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[36] Section 20(1)(d) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[37] Section 20(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).
- ^[38] Section 20(3) amended by *National Cultural Property (Preservation) (Amendment) Act* 1986 (No. 67 of 1986), paragraph (b).