



ANALYSIS

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1994-95, No. 38

An Act to provide for the better protection of antiquities, to establish and record the ownership of Cook Islands artifacts, and to control the sale of artifacts within the Cook Islands

(8 July 1995)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Antiquities and Artifacts Act 1994-95.
2. Interpretation - In this Act, unless the context otherwise requires, -
 "Antiquity" means -
 (a) Any chattel of any kind whatsoever, not being a chattel to which any of paragraphs (b) to (h) of this definition applies, which -

- (i) Is of national, historical, scientific, or artistic importance; and
 - (ii) Relates to the European discovery, settlement, or development of the Cook Islands and
 - (iii) Is, or appears to be, more than 60 years old;
- (b) Any artifact;
 - (c) Any book, diary, letter, document, paper, record, or other written matter (whether in manuscript or printed form), photographic negative or printing, film, printed reproduction of any picture, or sound recording -
 (i) Which relates to the Cook Islands and is of national, historical, scientific, artistic, or literary importance; and
 (ii) Which is more than 60 years old; and
 (iii) Of which, in the case of a book first printed and published in the Cook Islands, no copy is in the custody of the Cook Islands National Library.
 - (d) Any work of art which relates to the Cook Islands and which is more than 60 years old, and is of national, historical, or artistic value or importance;
 - (e) Any type specimen of any animal, plant, or mineral existing or formerly existing in the Cook Islands;
 - (f) Any meteorite or part of a meteorite recovered in the Cook Islands;
 - (g) Any bones, feathers, or other parts or the eggs of species of animals, birds, reptiles, or amphibians native to the Cook Islands which are generally believed to be extinct;
 - (h) Any ship, boat, or aircraft, or any part of any ship, boat, or aircraft, or any equipment, cargo, or article belonging to any ship, boat, or aircraft in any case where that ship, boat, or aircraft has been, or appears to have been, a wreck in the Cook Islands, or within the territorial waters of the Cook Islands, for more than 60 years and that ship, boat, aircraft, equipment, cargo, or article as the case may be, is of national, historical, scientific, or artistic value or importance;

"Artifact" means any chattel, carving, object, or thing which relates to the history, art, culture, traditions, or economy of the Cook Islands Maori or other pre-European inhabitants of the Cook Islands and which was or appears to have been manufactured or modified in the Cook Islands by any such inhabitant, or brought to the Cook Islands by an ancestor of any such inhabitant, or used by any such inhabitant, prior to 1965.

"Book" means any collection of printed sheet of paper or other material, and includes every part or division of a book and every pamphlet, magazine, periodical, sheet of letterpress, sheet of music, map, plan, chart, art print, or table separately published;

"Collector" means any person or body (whether incorporated or unincorporated), other than a licensed auctioneer, a licensed secondhand dealer, or a public museum, possessing one or more artifacts;

"Found", in relation to any artifact, means discovered or obtained in circumstances which do not indicate with reasonable certainty the lawful ownership of the artifact and which suggest that the artifact was last in the lawful possession of a person who at the time of finding is no longer alive; and "finding" and "finds" have corresponding meanings;

"Grave" means the place where the remains of any person or persons are buried or otherwise permanently deposited;

"Licence" means a licence issued under section 15 of this Act; and "licensed" has a corresponding meaning;

"Registered collector" means a collector registered under section 14 of this Act;

"Relative", in relation to any person, means -

- (a) The spouse of that person;
- (b) A grandparent, parent, child, brother, sister, uncle, or aunt of that person, whether of the full blood or the half-blood;
- (c) The issue of any person referred to in paragraph (a) or paragraph (b) of this definition, and the spouse of any such person or issue;

"Replica of an artifact" means an accurate copy of a specific individual artifact;

"Minister" means the Minister for Cultural Development.

"Secretary" means the Secretary for the Ministry of Cultural Development or any person appointed by him in writing from time to time for the purposes of this Act;

"Type specimen" means the specimen on which is based an original published description of the animal, plant, or mineral of which the specimen serves as an example;

"Work of art" means -

- (a) Any painting in oil or watercolours or any other painting medium, framed or unframed, on any material;
- (b) Any ink, pencil, or charcoal drawing or pastel or any drawing using any other graphic medium, framed or unframed, or any material;
- (c) Any hand engraved or hand etched block, plate, or other material and any hand printed impression, framed or unframed, thereof;
- (d) Any hand drawn lithographic stone or other material and any hand printed impression, framed or unframed, thereof;
- (e) Any sculpture, including casting, in any material whether in the round, in relief, or in intaglio.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Minister may acquire antiquities - (1) The Minister -

- (i) may with the approval of Cabinet purchase or otherwise acquire, or
- (ii) accept by way of gift, bequest, or otherwise, any antiquity.

(2) Any antiquity acquired under this section shall be kept in safe custody in accordance with the directions of the Secretary.

5. Restrictions on export of antiquities - (1) It shall not be lawful after the commencement of this Act for any person to remove or attempt to remove any antiquity from the Cook Islands otherwise than pursuant to the authority and in conformity with the terms and conditions of a written certificate of permission given by the Secretary under this Act:

Provided that the Secretary may from time to time, by notice in the Gazette, exempt any class or classes of antiquities from the provisions of this section where he is satisfied that -

- (a) Sufficient examples of that class or those classes are held in public ownership in the Cook Islands; and
- (b) It would not be contrary to the public interest to exempt that class or those classes.

(2) Every person who, without reasonable excuse contravenes any provision of this section or of the terms and conditions of a written certificate of permission given pursuant to subsection (1) commits an offence, and shall be liable on conviction to a fine not exceeding \$1,000.

(3) Nothing in this section shall apply to any antiquity lawfully taken and ordinarily kept outside of the Cook Islands.

6. Application for permission - (1) Every application for permission to remove an antiquity from the Cook Islands shall be in the form provided by the Secretary.

(2) The Secretary, in considering any application under this section, shall, in respect of the antiquity sought to be removed, have regard to -

- (a) Its historical, archaeological, scientific, cultural, literary, artistic, or other special national or local importance; and
- (b) Its spiritual or emotional association with the people of the Cook Islands or any group or section thereof; and
- (c) Its rarity; and
- (d) The extent to which similar articles are held in public ownership in the Cook Islands; and
- (e) The probable effect of its removal on historical or scientific study or research in the Cook Islands; and
- (f) Any other matters which appear to him to be relevant.

(3) After having regard to the matters referred to in subsection (2) and after making such inquiries and investigations and seeking such expert opinion as he thinks fit, the Secretary may grant his permission, either unconditionally or subject to such terms and conditions as may be imposed by him in writing, for the removal of the antiquity from the Cook Islands:

Provided that the Secretary shall refuse to grant his permission unless he is satisfied that the removal of the antiquity -

- (a) Would not be to the substantial detriment of historical or scientific study or research in the Cook Islands; and
- (b) Would not be contrary to the public interest.

7. Certificate of permission - Where permission is granted by the Secretary for the removal of any antiquity from the Cook Islands, a certificate shall be issued to the applicant under the hand of the Secretary.

8. Conditions imposed by Secretary - (1) Without prejudice to the generality of the authority given under this Act to impose terms and conditions, the Secretary may, when granting permission to remove any antiquity from the Cook Islands, impose conditions -

- (a) Requiring the owner to permit the antiquity to be copied by photography, cast, or otherwise in such manner, in such numbers, and by such person, as the Secretary may direct;
- (b) Requiring the owner of the antiquity to deliver it to such person as the Secretary may direct for the purpose of being packed and dispatched from the Cook Islands, at a cost and risk of the owner, to the address specified by the owner;
- (c) Requiring the antiquity to be returned to the Cook Islands no later than the date of the expiry of a period specified in the certificate of permission to remove the antiquity from the Cook Islands, and to require the deposit of a bond of such amount as the Secretary thinks fit, pending its return.

(2) Every copy made pursuant to paragraph (a) of sub-section (1) shall, subject to the provisions of the law for the time being in force in the Cook Islands relating to copyright, be the property of the Crown and shall be kept in safe custody in accordance with the directions of the Secretary.

9. Appeal against Secretary's decision - (1) Where the Secretary has refused his permission to the removal of any antiquity or has granted any such permission subject to terms and conditions, the applicant for the permission may appeal to the Minister on the grounds that, having regard to the provisions of this Act, the decision of the Secretary was not reasonably arrived at, and the Minister may, after seeking such advice (if any) as he considers necessary, confirm, vary, or reverse the decision of the Secretary, and the decision of the Minister with regard to any such appeal shall be final.

(2) Any appeal under this section shall be forwarded to the Minister within 21 days after the date when the decision of the Secretary is made known to the appellant.

10. Application of Customs Act 1913 - (1) Subject to the provisions of this Act, any antiquity exported or attempted to be exported in breach of this Act shall be forfeited to the Crown and the provisions of the Customs Act 1913 (other than section 287) relating to forfeited goods shall apply to any such article in the same manner as they apply to goods forfeited under the Customs Act 1913.

(2) Where any antiquity is condemned as forfeited to the Crown pursuant to this section, it shall be delivered to the Minister and retained in safe custody in accordance with his directions: Provided that the Minister may, at his discretion, direct that the antiquity be returned to the person who was the owner thereof immediately before forfeiture subject to such conditions (if any) as the Minister may think fit to impose.

11. Establishing the ownership and custody of artifacts - (1) Any artifact found anywhere in the Cook Islands or within the territorial waters of the Cook Islands after the commencement of this Act is hereby deemed to be *prima facie* the property of the Crown: Provided that where any artifact has been recovered from the grave of any person or persons whose identity is known, the matter shall be referred to the High Court to determine who is the proper person or who are the proper persons to hold custody of the artifact.

(2) Notwithstanding the provisions of subsection (1), if actual or traditional ownership, rightful possession, or custody of any artifact referred to in that sub-section is subsequently claimed, the Minister or any person who may have any right, title, estate, or interest in any such artifact may apply to the Court to exercise any part of its jurisdiction under section 12:

Provided that no right, title, estate, or interest in any such artifact shall exist or be deemed to exist solely by virtue of ownership of the land from which the artifact was found or recovered.

(3) Every person who, after the commencement of this Act, finds any artifact anywhere in the Cook Islands or within the territorial waters of the Cook Islands shall, within 28 days of finding the artifact, notify either the Secretary, or the nearest Government Representative who shall notify the Secretary of the finding of the artifact: Provided that in the case of any artifact found during the course of any archaeological investigation, the notification shall be made within 28 days of the completion of the field work undertaken in connection with the investigation.

(4) Upon receipt of a notification in accordance with subsection (3) the Secretary shall take such action as he deems appropriate to provide for the examination of the artifact, its recording and its custody, either by the finder or otherwise, and on such conditions as the Secretary deems fit.

(5) Every person who finds any artifact, knowing or having reasonable cause to suspect that it is an artifact, and contravenes subsection (3) commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

12. High Court's jurisdiction over artifacts - (1) The High Court shall have jurisdiction in respect to any artifact to which section 11 applies -

- (a) To determine for the purposes of any proceeding or upon application by the Minister or by any person authorised to apply under subsection (2) of section 11 whether or not the subject-matter of the proceeding or application is an artifact;
- (b) To hear and determine as between any persons applying under subsection (2) of section 11 any claim, whether at law or in equity to the actual or traditional ownership, rightful possession, or custody of any artifact, or to any right, title, estate or interest therein;
- (c) In the case of any artifact recovered from a grave, to determine if possible the proper person or persons to hold custody of the artifact;
- (d) To make an order prohibiting any person from dealing with or doing any injury to any artifact which is the subject-matter of any application to the Court, if in any case the application has not been finally disposed of by the Court;
- (e) To vest in any person or persons as trustee or trustees any artifact for safekeeping and preparation;
- (f) To enforce the obligations of the trust (whether by way of an order or otherwise) against any person or persons appointed by the Court as trustee or trustees;
- (g) To appoint a new trustee or trustees for any artifact held in trust.

(2) The High Court shall have jurisdiction to make an order prohibiting any offering for sale or parting with possession of any artifact (whether or not an artifact to which section 11 applies), by any person if that artifact is in the power or possession of that person by way of gift according to Cook Islands Maori custom and usage.

13. Disposal of artifacts - (1) It shall not be lawful after the commencement of this act for any person to sell or otherwise dispose of any artifact, knowing or having reasonable cause to suspect that it is an artifact, otherwise than to a registered collector or to the Secretary or through the offices of a licensed auctioneer or a licensed secondhand dealer:

Provided that this subsection shall not apply to any disposition by any person to a relative of that person, whether by way of gift *inter vivos*, or pursuant to a testamentary disposition, or under the intestacy of that person, or by survivorship on the death of that person.

(2) Notwithstanding anything in subsection (12), no person or institution entrusted with the custody of any artifact in accordance with the terms of subsection (4) of section 11 may dispose of that artifact other than at the direction of the Secretary.

(3) Without limiting in any way his powers under sub-section (2), the Secretary may, on application and subject to such conditions as he considers necessary, authorise approved institutions to employ destructive analytical techniques to specified artifacts or to specified classes of artifacts.

(4) Every person, other than a registered collector, who contravenes the provisions of this section commits an offence, and shall be liable on conviction to a fine not exceeding \$1,000.

(5) On the conviction of any person of an offence against this section in respect of the disposition of any artifact, the Court may, if it thinks fit, declare the artifact to be forfeited to the Crown.

(6) Where any artifact is forfeited to the Crown pursuant to this section, it shall be delivered to the Minister and retained in safe custody according to his directions.

14. Registration of collectors - (1) No collector shall add or attempt to add to his collection of artifacts and no person shall be granted custody of any artifact by the Secretary unless the collector or person has been registered as a collector of artifacts by the Secretary.

(2) The Secretary shall, where reasonable grounds for doing so exist, have power to refuse registration and in particular shall not be required to register as a collector of artifacts any person -

- (a) Who is not ordinarily resident in the Cook Islands; or
- (b) Who has been convicted of an offence against provision of this Act or of any other enactment for the time being in force relating to historic or cultural places.

(3) It shall be a condition of registration of any person as a registered collector that -

- (a) Except in the case of a gift or bequest to a relative of that person, disposal of part or the whole of his collection shall be only to another registered collector, or to the Secretary, or through the offices of a licensed auctioneer or a licensed secondhand dealer;
- (b) His collection shall be made available for examination at any reasonable time by any person so authorised by the Secretary;
- (c) He will undertake to notify the Secretary of any change in his collection which has taken place otherwise than through the offices of a licensed auctioneer or a licensed secondhand dealer within 14 days of such change;
- (d) He will notify the Secretary of any change in the place at which the collection is held within 14 days after the date of the change.

(4) Every application for registration as a collector of artifacts shall be in the form provided by the Secretary, and, where registration is granted by the Secretary to any person, a certificate of registration shall be issued to the applicant under the hand of the Secretary.

(5) The Secretary shall revoke the registration of any registered collector who is convicted of an offence against this Act or any Act for the time being in force relating to Historic or Cultural Places.

(6) Every person who -

- (a) Not being a registered collector, -
 - (i) Acquires or attempts to acquire any artifact, knowing or having reasonable cause to suspect that it is an artifact, otherwise than in accordance with any provision of this Act; or
 - (ii) Falsely declares to any person that he is a registered collector; and
- (b) Being a registered collector, fails to comply with any of the conditions of registration specified in sub-section (3);

commits an offence and shall be liable on conviction to a fine not exceeding \$1,000.

15. Licensing of auctioneers and secondhand dealers - (1) Notwithstanding anything in any other enactment, no auctioneer or secondhand dealer shall trade in artifacts unless he is licensed by the Secretary to trade in artifacts in accordance with the provisions of this section.

(2) It shall be a condition of the licensing of any auctioneer or secondhand dealer in accordance with this section that he will -

- (a) notify the Secretary of every artifact which is to be offered for sale, being an artifact in respect of which a certificate of examination has been issued under section 16.
 - (b) notify the Secretary of every artifact which is to be offered for sale, being an artifact in respect of which a certificate of examination has not been issued under section 16 and will not offer for sale or sell the artifact (other than the Secretary) until such time as the Secretary has issued the certificate of examination;
 - (c) sell artifacts only to the Secretary, licensed secondhand dealers, licensed auctioneers, or registered collectors;
- Provided that he may agree to sell any artifact to any other person subject to the condition that the sale is not to be completed or possession of the artifact is not to be given to that other person unless and until that other person becomes a registered collector.
- (d) give the certificate of examination of any artifact sold by him to the purchaser on completion of the sale of the artifact;
 - (e) maintain a register in duplicate in the form provided by the Secretary, recording the name and address of the vendor and purchaser of every artifact sold, the description of the artifact given in the certificate of examination issued in accordance with section 16, the number of the certificate of examination, and such other details as the Secretary may require;
 - (f) forward within 28 days of each sale of an artifact, one copy of the entry in the register maintained in accordance with paragraph (e) to the Secretary, to form the basis of a central register of artifacts to be maintained by the Secretary;

- (g) make available for examination by any person so authorised by the Secretary the register maintained in accordance with paragraph (e);
- (h) display prominently in his premises a notice issued by the Secretary drawing attention to the provisions of this Act.

(3) Every licensed auctioneer and licensed secondhand dealer shall be issued with a licence under the hand of the Secretary and unless sooner revoked or surrendered the licence shall remain in force until the 31st day of January in the year following that in which it was issued and then expire, but may be renewed.

(4) Every application for a licence or for the annual renewal of a licence as an auctioneer or secondhand dealer under this section shall be in the form provided by the Secretary, and shall be forwarded to the Secretary, together with the prescribed fee.

(5) The Secretary shall revoke the licence of any licensed auctioneer or licensed secondhand dealer who -

- (a) is convicted of an offence against this Act or any other enactment for the time being in force relating to historic or cultural places; or
- (b) ceases to be an auctioneer or secondhand dealer under any law (other than this Act) for the time being in force relating to the licensing of auctioneers or secondhand dealers.

(6) Every person who -

- (a) In a manner contrary to the provisions of this section purchases or attempts to purchase or sells or attempts to sell any artifact, knowing or having reasonable cause to suspect that it is an artifact; or falsely declares to any person that he is a licensed auctioneer or, as the case may be, a licensed secondhand dealer; or
- (b) Being a licensed auctioneer or a licensed secondhand dealer, fails to comply with any of the conditions of his licence specified in subsection (2) -

commits an offence, and shall be liable on conviction to a fine not exceeding \$2,000.

16. Certificate of examination to be issued by the Secretary - (1) At the request of a licensed auctioneer or of a licensed secondhand dealer, or at the request of any registered collector, the Secretary, after obtaining such independent expert advice (if any) that he deems necessary, shall issue a certificate of examination in respect of any artifact within 28 days of the artifact being first made available for examination.

(2) The Secretary upon being requested to issue a certificate of examination by a licensed auctioneer or a licensed secondhand dealer, shall notify the Minister availability of the artifact and subject to the approval of the Minister of Finance, the Minister may make an offer for its purchase.

(3) Every certificate of examination issued by the Secretary in respect of any artifact shall be in the form provided by the Secretary and shall be numbered, and every artifact examined by the Secretary for the purpose of issuing a certificate of examination shall be clearly identified with a registration number.

(4) Every person who -

- (a) knowingly removes or alters the registration number identifying any artifact pursuant to this section; or
- (b) knowingly alters a certificate of examination issued by the Secretary in respect of any artifact; or

- (c) makes or causes to be made any certificate of examination purporting to be issued by the Secretary without the authority of the Secretary -

commits an offence, and shall be liable on conviction to a fine not exceeding \$500.

17. Disclosure of information - (1) No person who under this Act becomes aware of the ownership or location of any artifact shall disclose any information relating thereto to any other person except as required or permitted pursuant to this Act, or with the written consent of the Secretary or of the owner of the artifact, or of the person having lawful custody thereof.

(2) Any person who knowingly acts in contravention of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$500.

18. Replica of artifact - (1) Every person who manufactures for sale a replica of any artifact shall be required to identify it clearly and permanently as such.

(2) Every person who, without reasonable cause, fails to comply with the provisions of subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding \$500.

19. Expenses of administration - All expenses incurred in the administration of this Act shall be paid out of such money as may from time to time be appropriated by Parliament for the purpose.

20. Annual report - The Secretary shall include in his report to the Minister for every financial year an account of the operation of this Act, with particular reference to the artifacts found, the artifacts placed in the custody of other persons (whether by the Secretary or by the High Court) and the permission given by the Secretary for the removal of antiquities from the Cook Islands.

21. Saving of other enactments - The provisions of this Act are in addition to and not in substitution for the provisions of any other enactment but, except where this Act otherwise provides, nothing in this Act shall derogate from any provision of any other enactment. Compliance with the provisions of any other enactment shall not confer any relief or exemption from liability under this Act, but no person shall be convicted of any offence under this Act in respect of the same matter for which he has been convicted of an offence under any other enactment.

22. Regulations - The Queen's Representative may from time to time by Order in Executive Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

23. Consequential amendments - The Cook Islands Amendment Act 1950 is amended, by repealing Part I.

This Act is administered by the Ministry of Cultural Development