

HERITAGE BILL 2021
(BILL NO. 3 OF 2021)

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SCHEDULE—CRITERIA FOR THE ASSESSMENT OF OUTSTANDING
UNIVERSAL VALUE

BILL NO. 3 OF 2021**A BILL**

FOR AN ACT TO GIVE EFFECT TO THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION CONVENTION CONCERNING THE PROTECTION OF THE WORLD CULTURAL AND NATURAL HERITAGE AND TO PROVIDE FOR THE RECOGNITION AND MANAGEMENT OF PLACES IN FIJI HAVING WORLD HERITAGE VALUES BASED ON THE OPERATIONAL GUIDELINES FOR THE IMPLEMENTATION OF THE WORLD HERITAGE CONVENTION AND FOR RELATED MATTERS

PART 1—PRELIMINARY*Short title and commencement*

- 1.**—(1) This Act may be cited as the Heritage Act 2021.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

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

“action plan” means Fiji’s action plan for the implementation of the World Heritage Convention as prepared by the Council;

“archaeological impact assessment” means the impact assessment designed to gain the fullest possible understanding of how archaeological resources could be affected by a development proposal;

“buffer zone” means an area surrounding a potential World Heritage place or World Heritage property which has complementary legal or customary restrictions placed on its use and development to give an added layer of protection to the potential World Heritage place or World Heritage property, the criteria of which is described under paragraphs 103 to 107 of the Operational Guidelines;

“buffer zone management plan” means a plan for the day to day management of a buffer zone area so that activities implemented within the area do not encroach on a protected area often peripheral to it;

“Chairperson” means the chairperson of the Council;

“Council” means the Fiji Heritage Council established under section 6;

“cultural heritage” means the following—

- (a) monuments such as architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- (b) groups of buildings such as groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; or
- (c) sites such as works of humans or the combined works of nature and humans, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view;

“Department” means the department responsible for heritage;

“development” has the meaning given in section 2 of the Town Planning Act 1946;

“Director” means the director responsible for heritage;

“Fiji Register” means the register of potential World Heritage places established under section 16;

“financial year” means a 12 month period beginning on and including 1 August and ending on and including 31 July;

“heritage” includes cultural heritage and natural heritage;

“heritage significance” means the significance of a place or feature of a place, including its aesthetic, architectural, historical, scientific, social or other significance to the present generation or past or future generations;

“management”, in relation to a place under this Act, includes—

- (a) the retention and transmission of the heritage significance of the place; and
- (b) any protection, conservation, presentation, promotion, maintenance, preservation, restoration, reconstruction or adaptation of the place;

“management authority” means the authority responsible for the management of a place under this Act including the implementation of the management plan for the place;

“management plan” means a documented system which may specify how the outstanding universal value of a property is preserved;

“member” means any member of the Council appointed under section 6;

“Minister” means the Minister responsible for heritage;

“National Trust” means the National Trust for Fiji established under section 4 of the National Trust of Fiji Act 1970;

“natural heritage” means the following—

- (a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view;
- (b) geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation; or
- (c) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty;

“nominated property” means a cultural or natural heritage area protected by a buffer zone;

“nomination dossier” means the official document submitted to UNESCO by States Parties for the potential inscription of a property on the World Heritage List;

“Operational Guidelines” means the Operational Guidelines for the Implementation of the World Heritage Convention which is periodically revised to reflect the decisions of the World Heritage Committee;

- “outstanding universal value” means cultural or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity, the criteria of which is described under paragraphs 49 to 53 of the Operational Guidelines and listed under the Schedule;
- “Permanent Secretary” means the permanent secretary responsible for heritage;
- “person” or “party” includes any company or association or body of persons, corporate or unincorporate;
- “potential World Heritage place” means any place entered in the Fiji Register and which the Council has declared as such by notice in the Gazette;
- “public officer” has the meaning given in section 163 of the Constitution of the Republic of Fiji;
- “statement of integrity or statement of authenticity” means a statement indicating how well the attributes of a site reflect outstanding universal value and defines the integrity of a site which is measured through the wholeness and intactness of the site’s natural or cultural heritage and its attributes;
- “statement of significance” means a statement which indicates the significance of a place;
- “status report” means a document describing the situation of a heritage asset at the present time;
- “Tentative List” means an inventory of places suitable for inscription on the World Heritage List, the process of which is described under paragraphs 62 to 76 of the Operational Guidelines;
- “UNESCO” means the United Nations Educational, Scientific and Cultural Organization;
- “World Heritage Convention” means the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage which was adopted by the UNESCO General Conference in 1972;
- “World Heritage List” means a list of properties forming part of cultural heritage and natural heritage which are considered as having outstanding universal value pursuant to the paragraphs 45 to 119 of the Operational Guidelines; and
- “World Heritage property” means any place listed by the UNESCO World Heritage Committee on the World Heritage List pursuant to paragraphs 154 to 157 of the Operational Guidelines.

Objectives

3. The objectives of this Act are to—
- (a) provide for the recognition and management of places having potential and actual world heritage values;
 - (b) establish the Council and provide for the functions and powers for safeguarding the integrity of places having potential and actual world heritage values;
 - (c) establish, monitor and manage the Fiji Register;
 - (d) provide for the management of places on the Fiji Register;
 - (e) provide for individual operating trust funds for places on the Fiji Register;
 - (f) implement the World Heritage Convention; and
 - (g) provide for other matters that are necessary for the administration of this Act.

Act binds the State

4. This Act binds the State.

Administration

5. The Department, in consultation with the Minister, has the responsibility of administering this Act and must perform all the functions assigned to it by or under this Act.

PART 2—FIJI HERITAGE COUNCIL

Fiji Heritage Council

- 6.—(1) This section establishes the Fiji Heritage Council.
- (2) The Council consists of 11 *ex-officio* members and 4 other members appointed by the Minister.
- (3) The 11 *ex-officio* members comprise the following—
- (a) the Permanent Secretary who is the Chairperson;
 - (b) the Director of the National Trust or his or her representative;
 - (c) the Director of the Fiji Museum or his or her representative;
 - (d) the Director of the Department of Tourism or his or her representative;
 - (e) the Director of Town and Country Planning or his or her representative;
 - (f) the Director responsible for environment or his or her representative;
 - (g) the Director of Lands or his or her representative;
 - (h) a director under the Ministry responsible for iTaukei affairs or his or her representative;

- (i) a manager of the iTaukei Affairs Board or his or her representative;
- (j) a manager of the iTaukei Land Trust Board or his or her representative; and
- (k) the Secretary-General of the Fiji National Commission for UNESCO or his or her representative.

(4) The Minister, when appointing the 4 other members of the Council, must ensure that—

- (a) 2 persons represent organisations dealing with the protection and management of the natural environment; and
- (b) 2 persons represent organisations dealing with the protection and management of the cultural environment.

(5) A member appointed under subsection (4) may hold office for a term of 3 years and is eligible for reappointment.

(6) The Council may invite a person—

- (a) who, in the opinion of the Council, possesses expert knowledge necessary in the exercise of the powers and performance of the functions of the Council;
- (b) who is not a public officer; and
- (c) for such purpose and conditions as the Council may determine,

and such person may be entitled to a sitting allowance as determined by the Minister.

(7) The Director is the secretary to the Council.

(8) A member of the Council who is not a public officer may be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

Principles to guide the Council

7. The Council must ensure—

- (a) that Fiji's heritage is held in public trust for future generations and protected as the common heritage of Fiji and the world;
- (b) the greatest sustainable benefit derived from Fiji's heritage is consistent with its conservation;
- (c) that Fiji meets its obligation under the World Heritage Convention to recognise and manage the heritage significance of places having potential and actual world heritage values;
- (d) the development of a management plan for places having potential and actual world heritage values, taking into consideration vulnerable ecosystems and best practices suited to Fiji, in so far as possible;

- (e) that the management plan for a potential World Heritage place or a World Heritage property is implemented;
- (f) the participation of all parties, in particular local communities and land owning units, in the governance and management of Fiji's heritage;
- (g) the promotion of inter-governmental and stakeholder coordination and cooperation relating to world heritage;
- (h) the promotion of an informed consultative process that considers the interests, needs and values of all interested and affected parties;
- (i) the promotion of community well-being and empowerment through education, awareness and knowledge sharing; and
- (j) the resolution of actual or potential conflicts through appropriate procedures.

Functions of the Council

8.—(1) The functions of the Council are to—

- (a) advise the Minister on—
 - (i) the recognition and management of places in Fiji having potential and actual world heritage values;
 - (ii) the observation of Fiji's obligations under the World Heritage Convention and any related international instrument to which Fiji is a party; and
 - (iii) actions required to support Fiji's nominations to the Tentative List and the World Heritage List;
- (b) develop policy direction to support Fiji's obligations under the World Heritage Convention;
- (c) facilitate the implementation of the action plan;
- (d) keep the Fiji Register and monitor the status and progress of places on the Fiji Register;
- (e) receive and assist in the review and development of timelines for Fiji's nominations to the Tentative List and the World Heritage List;
- (f) consult with the Fiji Heritage Foundation on the funding of activities for world heritage;
- (g) facilitate the provision of technical advice on world heritage to the public;
- (h) facilitate the development and implementation of education and awareness programmes in relation to world heritage;
- (i) facilitate capacity building programmes with the relevant government agencies, including scholarships, for the heritage sector;

- (j) provide reports required by this Act, the World Heritage Convention, related laws and international instruments to which Fiji is a party, including periodic reports;
- (k) develop proposals and recommendations regarding the establishment of nominated properties and buffer zones;
- (l) provide information to the local community on the management of nominated properties and their buffer zones;
- (m) facilitate the implementation of the management plan of the nominated properties and their buffer zones;
- (n) prepare and submit budgetary proposals in line with the action plan; and
- (o) perform any other function conferred by this Act or any other written law.

(2) The Council may appoint committees, including a technical committee, to provide advice on matters of world heritage.

Meetings of the Council

9.—(1) The Chairperson must—

- (a) convene meetings of the Council; and
- (b) preside at all meetings, or in the absence of the Chairperson, the deputy chairperson, or in the absence of the Chairperson and the deputy chairperson, the members present may, for that particular meeting, select a member to preside at that meeting.

(2) There must not be less than 4 meetings in any financial year unless the Council otherwise determines.

(3) At any Council meeting, the quorum for the meeting is 8 voting members.

(4) Voting at any meeting of the Council must be as follows—

- (a) each member is entitled to only one vote;
- (b) if there is a tie of votes at a meeting, the Chairperson or the member presiding over the meeting has a casting vote; and
- (c) any invited member does not have the right to vote.

(5) The secretary must—

- (a) keep an accurate record of the minutes of every Council meeting; and
- (b) in a timely manner, distribute the minutes of the meeting.

Disclosure of interests

10.—(1) If a member has a direct or indirect personal, pecuniary or other interest in a matter being considered, or to be considered, and the interest may conflict with the performance of the member's duties in relation to the matter, that member must immediately disclose his or her interest at the meeting.

(2) The disclosure under subsection (1) must be recorded in the minutes of the meeting and unless the Council otherwise determines, the member must not—

- (a) be present during any deliberation of the Council in relation to the matter; or
- (b) take part in or vote on any resolution before the Council in relation to the matter.

Duties of the secretary

11.—(1) The Council may require the secretary to—

- (a) assist the Chairperson in convening meetings of the Council;
- (b) implement resolutions and instructions of the Council;
- (c) maintain the Fiji Register and facilitate public access to the Fiji Register; and
- (d) prepare a nomination dossier as instructed by the Council.

(2) The Council, in administering this Act, may require the secretary to—

- (a) be the focal point for matters and communication with the UNESCO World Heritage Centre in relation to world heritage activities in Fiji;
- (b) advise the Council;
- (c) develop policies on the recognition and management of Fiji's heritage;
- (d) implement and monitor the action plan;
- (e) monitor and report the status of places—
 - (i) on the Fiji Register, the Tentative List and the World Heritage List; and
 - (ii) being considered for nomination to the Tentative List and the World Heritage List;
- (f) establish, maintain and update a database for Fiji's heritage;
- (g) assist in the preparation of places nominated to the Fiji Register, the Tentative List and the World Heritage List;
- (h) facilitate the payment of obligatory fees required by the World Heritage Convention and related international instruments to which Fiji is a party;
- (i) provide technical advice to the public on world heritage;
- (j) implement education and awareness programmes in relation to world heritage;
- (k) facilitate capacity building programmes for the heritage sector;

- (l) prepare reports required by this Act, the World Heritage Convention and related international instruments to which Fiji is a party; and
- (m) perform any other duty the Council may require.

Indemnity

12.—(1) The Council, the Department or any public officer employed or engaged by the Council or the Department is not liable for any action, suit, proceeding, dispute or challenge in any court, tribunal or any other adjudicating body for or in respect of any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under this Act or any other written law.

(2) Notwithstanding anything contained in subsection (1), the Minister may on an *ex-gratia* basis grant compensation to any person who has suffered any injury or damage to property, caused either directly or indirectly by any act or omission done in the exercise or non-exercise of the powers conferred by or duties prescribed under this Act or any other written law.

PART 3—ACCOUNTS AND FINANCES

Funds of the Council

13. The funds of the Council comprise the following—

- (a) money appropriated by Parliament for the purposes of this Act;
- (b) contributions or donations to the Council;
- (c) money borrowed by the Council; and
- (d) other money lawfully received by or on behalf of the Council.

Financial reporting and audit of accounts

14.—(1) The Council must cause proper accounts to be kept and, as soon as practicable after the end of each financial year but not more than 3 months, cause to be prepared for that financial year, a statement of accounts of the Council which is to include a balance sheet and an account of income and expenditure.

(2) The Council must cause the statement of accounts to be audited by the Office of the Auditor-General.

(3) The Council must, as soon as practicable, send a copy of the statement of accounts certified by the Office of the Auditor-General and a copy of the Office of the Auditor-General's report, to the Minister.

(4) The Minister must cause the audited statement of accounts to be laid before Cabinet within 28 days of receiving the Office of the Auditor-General's report made under this section.

Annual report

15.—(1) The Council must, as soon as practicable, at the end of each financial year, prepare and submit to the Minister, an annual report of its proceedings and operations for the preceding financial year.

- (2) The report must be in the form the Council considers appropriate and must include—
- (a) activities undertaken under this Act, related laws, the World Heritage Convention and related international instruments to which Fiji is a party;
 - (b) entries of potential World Heritage places on the Fiji Register and the status of the potential World Heritage places; and
 - (c) any other information the Minister may require.
- (3) The Minister must, as soon as practicable, cause a copy of the report to be laid before Cabinet.

PART 4—THE FIJI REGISTER

Establishment of the Fiji Register

16.—(1) This section establishes the Fiji Register for the registration of any place nominated to be a potential World Heritage place.

(2) A place which is being considered for nomination to the Tentative List or the World Heritage List must first be nominated to the Fiji Register.

(3) The Fiji Register consists of information the Council deems appropriate and must include—

- (a) the identification of the place;
- (b) the current state of the place;
- (c) a statement of significance of the place in accordance with the World Heritage Convention;
- (d) a draft management plan, including the management authority and the protective measures for the place; and
- (e) funding arrangements for the management of the place.

(4) The Council must not exclude a place from entry in the Fiji Register on the grounds that—

- (a) the protection afforded by this Act is appropriate notwithstanding that the place or object may be afforded protection by the operation of any other written law; or
- (b) another place or object with similar characteristics is already registered in the Fiji Register.

(5) The Fiji Register must be made available by the Council for public inspection during business hours and any person may inspect the Fiji Register on payment of a fee prescribed by regulations.

Potential World Heritage place

17.—(1) The Council, on its own initiative or on receipt of a nomination by any person, may determine a place as a potential World Heritage place if it is satisfied that the following requirements are met—

- (a) a status report of the place including a physical description and any studies of the place;
- (b) a statement of significance of the place demonstrated by—
 - (i) the most suitable nominating criteria;
 - (ii) a statement of outstanding universal value; and
 - (iii) a statement of integrity or statement of authenticity pursuant to paragraphs 79 to 95 of the Operational Guidelines;
- (c) a proposed management plan, including the management authority and the protective measures for the place;
- (d) actual and potential funding arrangements for the management of the place;
- (e) the use of free, prior and informed consultative process;
- (f) the consent of landowners and residents for the place to be nominated to the Fiji Register; and
- (g) the identification of actual and potential challenges.

(2) The Council must, when considering a proposed management plan, ensure that the proposed management plan is appropriate and achievable, and contains adequate protection measures for the place.

(3) The Council must, when satisfied that a place satisfies the requirements of this Part, enter the place in the Fiji Register.

(4) The Council must, as soon as practicable, after an entry is made in the Fiji Register, and approval is given by the Minister, declare a place to be a potential World Heritage place, by notice published in the Gazette.

(5) The declaration of a place as a potential World Heritage place by this Act does not affect the rights of the owner of any such place.

(6) A potential World Heritage place may be removed from the Fiji Register if the Council is satisfied that the place has been changed or altered, and that it fails to satisfy the requirements on which it was nominated.

Notice of nomination to the Fiji Register

18.—(1) The Council must, when determining a nomination to the Fiji Register, publish a notice in the Gazette and in a newspaper circulating in Fiji, calling for public submissions and objections.

(2) A notice under subsection (1) must—

- (a) include the identification of the place;
- (b) include a statement of significance of the place; and
- (c) invite submissions and objections to the nomination.

(3) The Council must take into account public submissions as part of its deliberations on whether to enter a place in the Fiji Register.

PART 5—MANAGEMENT OF POTENTIAL WORLD HERITAGE PLACE

Implementation of a management plan

19.—(1) The management of any potential World Heritage place must be undertaken to the standard required by the Council—

- (a) according to its management plan; and
- (b) by an approved management authority.

(2) Any change to the management plan must only be made following the approval of the Council.

National Heritage Area

20. The Council may request the Council of the National Trust to declare a potential World Heritage place as a National Heritage Area pursuant to section 20 of the National Trust of Fiji Act 1970 if that place has not been previously declared as such.

Monument

21.—(1) The Council may request the declaration of a potential World Heritage place as a monument pursuant to section 6 of the Preservation of Objects of Archaeological and Palaeontological Interest Act 1940 if that place has not been previously declared as such.

(2) The Council may, as soon as practicable for a place declared a monument, request the Fiji Museum to undertake an archaeological impact assessment, if that place has not undergone such assessment.

Grading

22. The Council may request the Director of Town and Country Planning to grade any building situated within a declared potential World Heritage place as part of the respective city or town planning scheme.

Development and destruction of any potential World Heritage place

23.—(1) The Director of Town and Country Planning must, as soon as practicable after receiving an application for development of a place listed on the Fiji Register, invite the Council to comment on the proposed development.

(2) A comment by the Council may include conditions that the applicant must comply with in relation to the proposed development.

(3) Any person who undertakes any development under this section without the consideration of the Council's comments, if any, commits an offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 2 years or both; or
- (b) in the case of a body corporate or unincorporate, a fine not exceeding \$600,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$500,000 or imprisonment for a term not exceeding 7 years or both; and
- (c) in the case of a continuing offence, a fine not exceeding \$6,000 for each day the offence continues.

(4) Any person who damages, destroys or changes by any means, any potential World Heritage place commits an offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 2 years or both; or
- (b) in the case of a body corporate or unincorporate, a fine not exceeding \$600,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$500,000 or imprisonment for a term not exceeding 7 years or both; and
- (c) in the case of a continuing offence, a fine not exceeding \$6,000 for each day the offence continues.

PART 6—WORLD HERITAGE LISTING

Nomination to the Tentative List and the World Heritage List

24.—(1) The Minister may, on the recommendation of the Council, propose to Cabinet to nominate a place or property to the Tentative List and the World Heritage List, where the Minister is satisfied that the place or property has, or is likely to be found to have world heritage values.

(2) The Council must, before making a recommendation to the Minister under this section, call for public submissions and objections within 28 days to the proposed nomination to the Tentative List and the World Heritage List.

(3) If Cabinet agrees to the Minister's proposal to nominate a place to the Tentative List and the World Heritage List, the Council must publish a notice in the Gazette and a newspaper circulating in Fiji, including—

- (a) the Council's intention to nominate;
- (b) a locality map with the location and boundaries of the place; and
- (c) a statement of significance for the place.

(4) The Council must, with the approval of Cabinet, submit a nomination to the UNESCO World Heritage Committee through the Secretary-General of the Fiji National Commission for UNESCO and the Minister.

(5) The decision by Cabinet is final and no objections or appeals must be heard in relation to a submission of a nomination to the Tentative List or the World Heritage List.

Preparation of nomination dossier

25. A nomination dossier must be—

- (a) prepared by the Department in partnership with relevant stakeholders;
- (b) approved by the Council; and
- (c) in accordance with the requirements of the Operational Guidelines.

World Heritage property

26.—(1) A potential World Heritage place included in the World Heritage List for Fiji must be declared by the Minister by notice in the Gazette, as a World Heritage property for such time as the property is included by the UNESCO World Heritage Committee in the World Heritage List.

(2) A declaration made under subsection (1) may revoke a prior declaration for the place as a potential World Heritage place.

Management of a World Heritage property

27.—(1) The management of any World Heritage property must be undertaken in accordance with its management plan, the standard required by the Operational Guidelines and the funding and international responsibilities under the World Heritage Convention.

(2) Cabinet may, on the advice of the Council, delegate the management of a World Heritage property to the National Trust with an adequate annual budget.

(3) The National Trust may manage a World Heritage property with an appropriate management authority, on the approval of the Council.

Duty of user

28. A person who intends to purchase land or property, or use, lease or occupy a property which is situated within a declared World Heritage property must be aware of the conditions of the relevant management plan and the conditions imposed by that management plan for the World Heritage property.

Development and destruction of a World Heritage property

29.—(1) No development must take place on any property or place within a declared World Heritage property unless that development has been approved and certified in writing by the Council, as being within the management plan for the World Heritage property.

(2) Any person who undertakes any development under this section without the approval and certification of the Council commits an offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 2 years or both; or

- (b) in the case of a body corporate or unincorporate, a fine not exceeding \$600,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$500,000 or imprisonment for a term not exceeding 7 years or both; and
 - (c) in the case of a continuing offence, a fine not exceeding \$6,000 for each day the offence continues.
- (3) Any person who damages, destroys or changes by any means, any World Heritage property commits an offence and is liable on conviction to—
- (a) in the case of an individual, a fine not exceeding \$100,000 or imprisonment for a term not exceeding 2 years or both; or
 - (b) in the case of a body corporate or unincorporate, a fine not exceeding \$600,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$500,000 or imprisonment for a term not exceeding 7 years or both; and
 - (c) in the case of a continuing offence, a fine not exceeding \$6,000 for each day the offence continues.

PART 7—FUNDS FOR FIJI'S HERITAGE

Operational trust fund

30.—(1) A place declared as a potential World Heritage place or a World Heritage property, as the case may be, must have its own operational trust fund which may accept funds from public or private sources, for the recognition and management of the place.

(2) An operational trust fund, with the approval of the Council, may be administered by the management authority for the potential World Heritage place or World Heritage property, as the case may be.

PART 8—BUFFER ZONES

Buffer zones

31.—(1) A buffer zone consists of those areas established to minimise, eliminate and prevent actual and potential adverse impacts to any potential World Heritage place or World Heritage property.

(2) A buffer zone must be established outside any potential World Heritage place or World Heritage property.

Establishment of buffer zones

32.—(1) The Department, on consultation with relevant stakeholders, may develop a proposal for the establishment of a buffer zone to be submitted to the Council.

(2) Pursuant to subsection (1), the Council may review the proposal and make recommendations to the Minister for approval.

(3) The Council may, as soon as practicable after the Minister approves the proposal, publish a map of the buffer zone in the Gazette.

Management of buffer zones

33.—(1) The Council may develop a buffer zone management plan for the purpose of assisting in the maintenance and daily care of a protected site, including its buffer zone.

(2) A buffer zone management plan may include the following—

- (a) guidelines and measures for the protection and proper use of land and natural resources within a buffer zone;
- (b) measures for the minimisation of adverse impact to a buffer zone;
- (c) financial sources necessary for the implementation of the buffer zone management plan;
- (d) special conditions or criteria to be considered by land owning units of buffer zone areas where leasing of land in a buffer zone is concerned; and
- (e) any other necessary measure or guideline the Council sees fit for the proper maintenance and care of a protected site and its buffer zone.

Destruction of buffer zones

34.—(1) Any person who undertakes any development in a buffer zone without proper consultation with the relevant authorities on the use of land and sea commits an offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both; or
- (b) in the case of a body corporate or unincorporate, a fine not exceeding \$300,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$250,000 or imprisonment for a term not exceeding 7 years or both; and
- (c) in the case of a continuing offence, a fine not exceeding \$3,000 for each day the offence continues.

(2) Any person who damages, destroys or changes by any means, any buffer zone commits an offence and is liable on conviction to—

- (a) in the case of an individual, a fine not exceeding \$50,000 or imprisonment for a term not exceeding 2 years or both; or
- (b) in the case of a body corporate or unincorporate, a fine not exceeding \$300,000, and for a director, chief executive officer, manager or officer in charge for the time being, a fine not exceeding \$250,000 or imprisonment for a term not exceeding 7 years or both; and
- (c) in the case of a continuing offence, a fine not exceeding \$3,000 for each day the offence continues.

PART 9—MISCELLANEOUS

Regulations

35.—(1) The Minister may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act.

(2) Without limiting the generality of subsection (1), the Minister may prescribe offences and penalties not exceeding—

- (a) in the case of an individual, a fine of \$100,000 or imprisonment for a term of 2 years or both; or
- (b) in the case of a body corporate, a fine of \$500,000.

Guidelines

36. Subject to the approval of the Minister, the Council may make guidelines necessary—

- (a) for the use of the name and logo associated with any World Heritage property in Fiji; and
- (b) for the execution of its functions and powers.

Act to prevail

37. This Act has effect notwithstanding any provision of any other written law, and accordingly, to the extent that there is any inconsistency between this Act and any other written law, this Act prevails.

Dissolution of the National Committee for World Heritage

38. The National Committee for World Heritage is dissolved.

SCHEDULE

CRITERIA FOR THE ASSESSMENT OF OUTSTANDING UNIVERSAL VALUE
(Section 2)

The World Heritage Committee considers a property as having outstanding universal value if the property meets one or more of the following criteria. The nominated property must therefore—

- (a) represent a masterpiece of human creative genius;
- (b) exhibit an important interchange of human values, over a span of time or within a cultural area of the world, on developments in architecture or technology, monumental arts, town planning or landscape design;
- (c) bear a unique or at least exceptional testimony to a cultural tradition or to a civilisation which is living or which has disappeared;
- (d) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates the significant stage(s) in human history;
- (e) be an outstanding example of a traditional human settlement, land use, or sea-use which is representative of a culture or cultures, or human interaction with the environment especially when it has become vulnerable under the impact of irreversible change;
- (f) be directly or tangibly associated with events or living traditions, with ideas, or with beliefs, with artistic and literary works of outstanding universal significance. (This criterion should preferably be used in conjunction with other criteria);
- (g) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
- (h) be outstanding examples representing major stages of earth's history, including the record of life, significant on-going geological processes in the development of landforms, or significant geomorphic or physiographic features;
- (i) be outstanding examples representing significant on-going ecological and biological processes in the evolution and development of terrestrial, fresh water, coastal and marine ecosystems and communities of plants and animals;
- (j) contain the most important and significant natural habitats for *in-situ* conservation of biological diversity, including those containing threatened species of outstanding universal value from the point of view of science or conservation.

February 2021

HERITAGE BILL 2021

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 Fiji became a party to the Convention Concerning the Protection of the World Cultural and National Heritage, which was adopted at the United Nations Educational, Scientific and Cultural Organization ('UNESCO') General Conference in 1972 ('**World Heritage Convention**') on 21 November 1990.
- 1.2 Fiji, as a State party to the World Heritage Convention, is required under the World Heritage Convention to adopt legislative and administrative provisions to give effect to the World Heritage Convention. Therefore, the Heritage Bill 2021 ('**Bill**') provides for the domestic application of the World Heritage Convention in Fiji.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the new legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill provides the definitions of the terms used throughout the Bill.
- 2.3 Clause 3 of the Bill provides that the objectives of the Bill are to provide for the recognition and management of places having potential and actual world heritage values, establish the Fiji Heritage Council ('**Council**'), establish the Fiji Register, provide for the management and operating trust funds for places registered on the Fiji Register, implement Fiji's obligations under the World Heritage Convention and provide for other matters that are necessary for the administration of the new legislation.

- 2.4 Clause 4 of the Bill stipulates that the new legislation will bind the State.
- 2.5 Clause 5 of the Bill provides that the department responsible for heritage (**‘Department’**) will administer the new legislation and perform all the functions assigned to it by or under the new legislation.
- 2.6 Clause 6 of the Bill provides for the establishment of the Council and the composition of the Council. The Council comprises 11 *ex-officio* members and 4 other members appointed by the Minister responsible for heritage (**‘Minister’**). The 4 other members appointed by the Minister may hold office for a term of 3 years and are eligible for reappointment. The Council may invite a person of expert knowledge to its meetings. Moreover, the Director responsible for heritage (**‘Director’**) is the secretary to the Council.
- 2.7 Clause 7 of the Bill provides for the principles that will guide the decisions and functions of the Council. The principles are based on Fiji’s obligations under the World Heritage Convention and the Operational Guidelines for the Implementation of the World Heritage Convention.
- 2.8 Clause 8 of the Bill outlines the functions of the Council. The Council is to advise the Minister on matters regarding the recognition and management of places in Fiji having potential and actual world heritage values and Fiji’s obligations under the World Heritage Convention. The Council may also, *inter alia*, develop policy direction to support Fiji’s obligations under the World Heritage Convention.
- 2.9 Clause 9 of the Bill outlines the procedures for meetings and the governance of the Council. The Chairperson must convene all the meetings of the Council and in his or her absence, the deputy chairperson, or any other member presiding over the meeting. The Council must have a minimum of 4 meetings in a financial year and the quorum for a meeting is 8 voting members.
- 2.10 Clause 10 of the Bill provides for the disclosure of any direct or indirect interest by a member of the Council in relation to a matter which may be in conflict with his or her role as a member of the Council.
- 2.11 Clause 11 of the Bill prescribes the duties of the secretary to the Council. The Council may require the secretary to administer and facilitate the obligations of the Council under the Bill and to facilitate Fiji’s obligations under the Bill.
- 2.12 Clause 12 of the Bill provides indemnity for any act done in good faith by any member of the Council, the Department or public officers employed by the Council or the Department.
- 2.13 Clause 13 of the Bill provides for the different sources of funds for the Council. Funds of the Council include money appropriated by Parliament, contributions and donations received by the Council and other money lawfully received by the Council.

- 2.14 Clause 14 of the Bill provides for the efficient and proper financial management of accounts of the Council and that the auditing of the statement of accounts be conducted by the Office of the Auditor-General. The certified statement of accounts must be submitted to the Minister and the Minister must present the same to Cabinet within 28 days of receiving the Office of the Auditor-General's report.
- 2.15 Clause 15 of the Bill provides that the Council is required to submit an annual report to the Minister and that on receipt of the annual report, the Minister must present the annual report to Cabinet.
- 2.16 Clause 16 of the Bill provides for the establishment of the Fiji Register of potential World Heritage places in Fiji (**'Register'**). The Register lists successful nominations of potential World Heritage places in Fiji that meet the criteria for nomination set by the Council. The Register must be available for public inspection during normal business hours.
- 2.17 Clause 17 of the Bill provides for the requirements and criteria set by the Council regarding any nomination by the public on whether a place can become a potential World Heritage place in Fiji. Once the Council is satisfied that the nomination by the public meets the criteria for nomination of a place as a potential World Heritage place, the place is entered in the Register and declared by notice in the Gazette as such. The declaration of a place as a potential World Heritage place does not affect the rights of the owner of the place.
- 2.18 Clause 18 of the Bill provides for the process for determining a nomination to the Register. The Council should ensure public submissions are called for during the process of nominating a potential World Heritage place.
- 2.19 Clause 19 of the Bill provides that the management of any potential World Heritage place must comply with the standard required by the Council and be undertaken by an approved management authority and according to its management plan.
- 2.20 Clause 20 of the Bill provides that the Council may request the Council of the National Trust for Fiji (**'National Trust'**) to declare a potential World Heritage place as a National Heritage Area pursuant to section 20 of the National Trust of Fiji Act 1970.
- 2.21 Clause 21 of the Bill highlights that the Board of Trustees of the Fiji Museum may declare a potential World Heritage place as a monument pursuant to section 6 of the Preservation of Objects of Archaeological and Paleontological Interest Act 1940.
- 2.22 Clause 22 of the Bill provides that the Council may request the Director Town and Country Planning to grade any building within a declared potential World Heritage place as part of the respective city or town planning scheme.

- 2.23 Clause 23 of the Bill provides for the Council to be consulted on any application for development of a place listed on the Fiji Register and any person who undertakes development without the consideration of the Council's comments commits an offence. Any person who damages, destroys or changes by any means the potential World Heritage place commits an offence and is liable on conviction to specified penalties.
- 2.24 Clauses 24 and 25 of the Bill provide for the process of nominating a place or property to the Tentative List and the World Heritage List established by UNESCO under the World Heritage Convention. Upon recommendation of the Council, the Minister may propose to Cabinet to nominate a place or property to the Tentative List and the World Heritage List. The Council must also call for public submissions on the proposed nomination and if Cabinet agrees with the nomination, the Council must publish a notice to that effect in the Gazette and a newspaper circulating in Fiji.
- 2.25 Clause 26 of the Bill empowers the Minister to declare a potential World Heritage place as a World Heritage property, where the potential World Heritage place has been included in the World Heritage List.
- 2.26 Clause 27 of the Bill provides for the management of a World Heritage property. The management of a World Heritage property must be undertaken according to its management plan. The management may be delegated to the National Trust.
- 2.27 Clause 28 of the Bill provides that a person procuring or leasing a piece of land or property within a designated World Heritage property needs to respect the conditions set by UNESCO regarding the inscribed World Heritage property and the conditions set by the management plan for the World Heritage property.
- 2.28 Clause 29 of the Bill provides that before any development of a World Heritage property is to be conducted there has to be written approval from the Council. Any person who fails to comply with this provision commits an offence and is liable on conviction to specified penalties.
- 2.29 Clause 30 of the Bill provides that places declared as potential World Heritage places or World Heritage properties are to have their own operational trust funds to cater for the management of the potential World Heritage places or World Heritage properties.
- 2.30 Clause 31 of the Bill provides for the establishment of a buffer zone around or outside a potential World Heritage place or World Heritage property for the purpose of protecting the potential World Heritage place or World Heritage property from potential threats.

- 2.31 Clause 32 of the Bill provides the process for the establishment of a buffer zone. The Department may develop a proposal to establish a buffer zone and make recommendations to the Council provided that the Department has consulted the relevant stakeholders. The Council then reviews the recommendations for the establishment of a buffer zone made by the Department and submits the recommendations to the Minister for approval. Upon approval by the Minister, the Council must publish a map of the buffer zone area in the Gazette.
- 2.32 Clause 33 of the Bill provides for the development of a buffer zone management plan for the purpose of the daily care of the protected site including its buffer zone. The buffer zone management plan must include *inter alia* guidelines and measures for the protection and proper use of land and natural resources within a buffer zone.
- 2.33 Clause 34 of the Bill provides that any person who undertakes development within a buffer zone without proper consultation with the relevant authorities commits an offence and is liable on conviction to specified penalties.
- 2.34 Clause 35 of the Bill empowers the Minister to make regulations to give effect to the new legislation. The Minister may by way of regulations, prescribe offences and penalties not exceeding a fine of \$100,000 or imprisonment for a term of 2 years, or both for individuals and a fine of \$500,000 for bodies corporate.
- 2.35 Clause 36 of the Bill provides that the Council, with the approval of the Minister, may establish guidelines for the administration of the new legislation.
- 2.36 Clause 37 of the Bill provides that the new legislation prevails where there are inconsistencies with other written laws.
- 2.37 Clause 38 of the Bill dissolves the National Committee for World Heritage which was established in 2003 to advise the Government on the implementation of the World Heritage Convention in Fiji.
- 2.38 The Schedule to the Bill provides the outstanding universal value criteria for any property nominated to be listed on the World Heritage List.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The new legislation comes under the responsibility of the Minister responsible for heritage.

A. SAYED-KHAIYUM
Attorney-General