

HERITAGE BILL 2016
(BILL NO. 10 OF 2016)

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SCHEDULE—Criteria for the Assessment of Outstanding Universal Value

BILL NO. 10 OF 2016**A BILL**

FOR AN ACT TO PROVIDE FOR THE RECOGNITION AND MANAGEMENT OF
PLACES HAVING WORLD HERITAGE VALUES IN FIJI

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Heritage Act 2016.
- (2) This Act comes into force on the date or dates appointed by the Minister by notice published in the Gazette.

Interpretation

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

“Archaeological Impact Assessment” refers to an impact assessment designed to gain the fullest possible understanding of how archaeological resources could be affected by a development proposal;

“buffer zone” takes its meaning from paragraph 104 of the Operational Guidelines and means the following—

- (a) an area surrounding the nominated property which has complementary legal and/or customary restrictions placed on its use and development to give an added layer of protection to the property; and
- (b) includes the immediate setting of the nominated property, important views and other areas or attributes that are functionally important as a support to the property and its protection;

“Buffer Zone Management Plan” refers to a plan for the day to day management of the 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 5;

“cultural heritage” refers to the meaning in Article 1 of the World Heritage Convention and means the following—

- (a) monuments—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—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—works of human 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 and arts;

“development” has the same meaning under section 2 of the Town Planning Act (Cap. 139);

“Director” means the Director of the Department;

“Fiji Action Plan” means the Fiji Action Plan for the Implementation of the World Heritage Convention;

“Fiji Register” means the Fiji Register of Potential World Heritage Places established under section 15;

“financial year” means the period from the first day of January to the thirty-first day of December of each year, both days inclusive;

“heritage” includes, either or both, cultural heritage and natural heritage;

“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;

“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 5;

“Minister” means the minister responsible for heritage and arts;

“National Trust” means the National Trust of Fiji;

“natural heritage” takes its meaning from Article 2 of the World Heritage Convention and 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;

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

“Outstanding Universal Value” means cultural and/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;

“Permanent Secretary” means the Permanent Secretary for Heritage and Arts;

“person” or “party” includes any company or association or body of persons, corporate or unincorporated;

“Potential World Heritage Place” means any place entered in the Fiji Register and which the Council has declared by notice in the Gazette;

“public officer” means a person in the permanent or temporary employment of the Government including a person appointed under the iTaukei Affairs Act (Cap. 120);

“Statement of Authenticity” refers to a statement indicating how well the attributes of a site reflects the Outstanding Universal Values. It also defines the integrity of a site which is measured through the wholeness and intactness of the natural and/or cultural heritage and its attributes;

“Statement of Significance” refers to a statement which indicates why a place is important;

“Status Report” refers to a document describing the situation of a heritage asset at the present time;

“Tentative List” refers to paragraphs 62 to 76 of the Operational Guidelines;

“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 criteria” is prescribed in paragraph 77 of the Operational Guidelines as provided for in the Schedule;

“World Heritage List” refers to paragraphs 45 to 119 of the Operational Guidelines;

“World Heritage property” means any place listed by the UNESCO World Heritage Committee in the World Heritage List according to paragraphs 154 to 157 of the Operational Guidelines; and

“UNESCO” stands for United Nations Educational, Scientific and Cultural Organisation.

Objects

3. The objects 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 grant functions, powers and duties for safeguarding the integrity of places having potential and actual world heritage values;
- (c) establish and observe 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 incidental matters.

Administration

4. 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

Establishment and composition of the Fiji Heritage Council

5.—(1) This section establishes the Fiji Heritage Council.

(2) The Council consists of 10 *ex-officio* members and 4 other members appointed by the Minister.

(3) The 10 *ex-officio* members or their representatives comprise the following—

- (a) the Permanent Secretary who shall be the Chairperson;
- (b) the Secretary General of the Fiji National Commission for UNESCO;
- (c) the Director of the National Trust;
- (d) the Director of the Fiji Museum;
- (e) a Director of the Ministry of iTaukei Affairs;
- (f) the Director of the Department of Tourism;
- (g) the Director of the Department of Town and Country Planning;
- (h) the Director of the Department of Environment;
- (i) a Manager of the iTaukei Land Trust Board; and
- (j) a Manager of the iTaukei Affairs Board.

(4) In appointing the other 4 members of the Council, the Minister must ensure that the Council comprises—

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

(5) A member appointed under subsection (4) may hold office for 3 years and is eligible for re-appointment.

(6) The Minister may appoint an invited person—

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

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

(7) The Director must be 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

6. The Council must ensure—

- (a) Fiji's heritage is held in public trust for future generations and must be 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) Fiji meets its obligation to the World Heritage Convention to recognise and manage the heritage significance of places having potential and actual world heritage values;
- (d) the development of Management Plans for places having potential and actual world heritage values, taking into consideration vulnerable ecosystems and best practices suited to Fiji, in as far as possible;
- (e) the development of Management Plans for Potential World Heritage Places and World Heritage property are 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 co-ordination and co-operation 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

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

- (a) advise the Minister on the—
 - (i) recognition and management of places in Fiji having potential and actual world heritage values;
 - (ii) observation of Fiji's obligations prescribed by the World Heritage Convention and any related international instrument; 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 to the World Heritage Convention;
 - (c) facilitate the implementation of the Fiji Action Plan;
 - (d) establish and 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 of 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 respect of 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, including periodic reports;
 - (k) develop proposals and recommendations regarding the establishment of nominated property and buffer zone boundaries;
 - (l) provide information to the local community on the management of nominated property and buffer zone boundaries;
 - (m) facilitate the implementation of the nominated property and Buffer Zone Management Plans;
 - (n) prepare and submit budgetary proposals in line with the Fiji 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 advise it on matters of world heritage.

Meetings of the Council

8.—(1) The Chairperson must—

- (a) convene meetings of the Council; and
- (b) preside at all meetings, or in his or her absence, 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 must be the Chairperson, or in his or her absence the Deputy Chairperson and 6 members or their respective representatives.

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

- (a) each member is entitled to one vote only;
- (b) if there is an equality of votes at a meeting, the Chairperson will have the casting vote; and
- (c) any invited member must not have the right to vote.

(5) The Secretary must—

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

Disclosure of interests

9.—(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 in subsection (1) may 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

10.—(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 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 communications with the UNESCO World Heritage Centre for 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 Fiji 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 payment of obligatory fees required by the World Heritage Convention and related international instruments;
- (i) provide technical advice to the public on world heritage;
- (j) implement education and awareness programmes in respect of 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 treaties to which Fiji is a party to; and
- (m) perform any other duty the Council may require.

Indemnity

11.—(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 the provisions of 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 the provisions of this Act or any other written law.

PART 3—ACCOUNTS AND FINANCE

Funds of the Council

12. The funds of the Council comprises—

- (a) money appropriated by the Government for the purpose of this Act;
- (b) contribution or donation 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

13.—(1) The financial year of the Council begins on the first day of January and ends on the thirty-first day of December of each year.

(2) 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.

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

(4) The Council must, as soon as practicable, send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report, to the Minister.

(5) The Minister must cause the audited statement of accounts to be laid before Cabinet within 28 days after receiving a report made under this section.

Annual report

14.—(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 a form the Council considers appropriate and must include—

- (a) activities undertaken under this Act, related laws, the World Heritage Convention and international instruments;
- (b) entries to the Fiji Register and the status of such 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

15.—(1) This section establishes the Fiji Register of Potential World Heritage Places to register or enter places, called Potential World Heritage Places.

(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 draft Statement of Significance of the place in accordance with the World Heritage Convention;
- (d) a draft Management Plan, including a 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 ground 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 entered in the Fiji Register.

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

Potential World Heritage Place

16.—(1) The Council, on its own initiative or upon receipt of a nomination by any person, may determine a place as a Potential World Heritage Place if it is satisfied that the place satisfies the following requirements—

- (a) a Status Report of the place including a physical description and any studies of the place;
- (b) a proposed 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 Authenticity or Integrity,prescribed in Articles 77 to 95 of the Operational Guidelines;
- (c) a proposed Management Plan, including a management authority and the protective measures for the place;
- (d) actual and potential funding arrangement for the management of the place;
- (e) the use of an 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 Management Plan is appropriate, 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 given by the Minister, declare a place to be a Potential World Heritage Place, by order published in the Gazette.

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

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

Notice of nomination to the Fiji Register

17.—(1) The Council must, when determining a nomination to the Fiji Register, publish a notice in the Gazette and 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 proposed Statement of Significance of the place; and
- (c) invite submissions as well as objections to the nomination.

(3) The Council must take into account public submissions as part of its deliberations on whether or not to enter a place in the Fiji Register.

PART 5—MANAGEMENT OF POTENTIAL WORLD HERITAGE PLACES

Implementation of Management Plan

18.—(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 be made following the approval of the Council.

National Heritage Area

19. The Council may request the Council of the National Trust, to declare a Potential World Heritage Place a National Heritage Area within the meaning provided in the National Trust of Fiji Act (Cap. 265) if that place has not been previously declared.

Monument

20.—(1) The Council may request the Board of Trustees of the Fiji Museum, to declare a Potential World Heritage Place as a ‘monument’ within the meaning provided in the Preservation of Objects of Archaeological and Palaeontological Interest Act (Cap. 264) if that place has not been previously declared.

(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

21. The Council may request the Director of Local Government 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

22.—(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 regards to the proposed development.

(3) Any person who undertakes any development under this section without the comments of the Council commits an offence and is liable upon conviction—

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

(4) Any person who damages, destroys or changes by any means, any Potential World Heritage Place commits an offence and is liable upon conviction—

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

PART 6—WORLD HERITAGE

Nomination to the Tentative List and the World Heritage List

23.—(1) The Minister may, on a recommendation by 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, invite 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) its intention to nominate;
- (b) a locality map with the location and boundaries of the place; and
- (c) a proposed 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 regards to submissions of a nomination to the Tentative List or the World Heritage List.

Preparation of nomination dossier to the World Heritage List

24. A nomination dossier to the World Heritage List 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

25.—(1) A Potential World Heritage Place included in the World Heritage List for Fiji must be declared by the Minister by notice published 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 in subsection (1) may revoke a prior declaration for the place as a Potential World Heritage Place.

Management of World Heritage property

26.—(1) The management of any World Heritage property must be undertaken according to its Management Plan to the standard required by the Operational Guidelines and in accordance with the funding and international responsibilities of a State Party.

(2) The 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

27. A person must be aware of the conditions of the relevant Management Plan and the conditions imposed by that Management Plan for a World Heritage property where that person intends to—

- (a) purchase land or other property; or

- (b) use, lease, or occupy property which is situated within a declared World Heritage property.

Development and destruction of World Heritage property

28.—(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.

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

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

(3) Any person who damages, destroys or changes by any means, any World Heritage property commits an offence and is liable upon conviction—

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

PART 7—FUNDS FOR FIJI'S HERITAGE

Operational trust fund

29.—(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, whether 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 a World Heritage property, as the case may be.

PART 8—BUFFER ZONE BOUNDARIES

Buffer zones

30.—(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 zone boundaries

31.—(1) The Department upon consultation with relevant parties, may develop a proposal for the establishment of a buffer zone boundary 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 the buffer zone boundary in the Gazette.

Management of buffer zones

32.—(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 the buffer zone.

(2) The Buffer Zone Management Plan must 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 minimisation of adverse impacts 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 buffer zone.

Destruction of buffer zone boundaries

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

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

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

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

PART 9—MISCELLANEOUS

Regulations

34. The Minister may make regulations prescribing 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.

Guidelines

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

- (a) for the administration of this Act;
- (b) for the use of the name and logo associated with any World Heritage Property in Fiji;
- (c) for the execution of its functions, powers and duties; and
- (d) to give effect to the provisions of this Act.

Application of other laws

36. Notwithstanding the provisions of any other written law, this Act must have effect, and where there is any inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act must prevail.

Dissolution of the National Committee for World Heritage

37. The National Committee for World Heritage is hereby dissolved.

SCHEDULE

CRITERIA FOR THE ASSESSMENT OF OUTSTANDING UNIVERSAL VALUE

The 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—

- (i) represent a masterpiece of human creative genius;
- (ii) 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;
- (iii) bear a unique or at least exceptional testimony to a cultural tradition or to a civilisation which is living or which has disappeared;
- (iv) be an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates the significant stage(s) in human history;
- (v) 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;
- (vi) 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);
- (vii) contain superlative natural phenomena or areas of exceptional natural beauty and aesthetic importance;
- (viii) 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;
- (ix) 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;
- (x) 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.

HERITAGE BILL 2016

EXPLANATORY NOTE

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

1.0 BACKGROUND

- 1.1 Fiji became a signatory to the International Convention Concerning the Protection of the World Cultural and Natural Heritage (**‘World Heritage Convention’**) in 1990. There are 184 countries that have signed the World Heritage Convention, making the World Heritage Convention universally renowned.
- 1.2 The World Heritage Convention recognises that some places are of particular significance that they are the shared responsibility of all people world wide. Under the World Heritage Convention, each State Party is required to list national sites that are uniquely outstanding as heritage places for conservation. When sites are listed it brings—
- (a) international recognition and attention;
 - (b) technical assistance for conservation;
 - (c) financial assistance for conservation; and
 - (d) exclusive branding in the international tourism market.
- 1.3 As a State Party to the World Heritage Convention, Fiji is required under the Convention to submit to the World Heritage Committee an inventory of properties suitable for inscription on the World Heritage List. This inventory is referred to as the Tentative List which includes cultural and natural heritage sites that are of national significance and have qualities of possible future heritage properties.
- 1.4 In 1994 Fiji submitted four tentative sites to the United Nations Educational, Scientific and Cultural Organisation (**‘UNESCO’**) World Heritage Centre which is the Secretariat to the World Heritage Committee. These sites are the—
- (a) Sigatoka Sand Dunes;
 - (b) Yadua Taba Iguana Sanctuary;

(c) Sovi Basin Forest Reserve; and

(d) Levuka Historical Town.

1.5 Consequentially, the Levuka Historical Town was nominated on the World Heritage List in June 2013 and became Fiji's first UNESCO World Heritage site.

1.6 Fiji has an on-going role to play under the World Heritage Convention where Fiji is required to give a report to UNESCO every six years on the progress of implementing the World Heritage Convention at national level. The report should include amongst others, the development and implementation of relevant legislation and policies, financial measures, conservation measures and management, and stakeholder coordination.

1.7 Therefore, with the intention to fulfil one of Fiji's obligations under the World Heritage Convention, the Heritage Bill 2016 (**'Bill'**) seeks to provide for the recognition, management and protection of places having world heritage values in Fiji.

2.0 CLAUSES

2.1 Clause 1 of the Bill provides for the short title and commencement of the Heritage Act 2016 (**'Act'**).

2.2 Clause 2 of the Bill provides for the interpretation of the Act.

2.3 Clause 3 of the Bill provides for the objects of the Bill, to incorporate the World Heritage Convention into domestic legislation and establish the Fiji Heritage Council (**'Council'**).

2.4 Clause 4 of the Bill provides that the administration of the Act is the responsibility of the department responsible for heritage and arts (**'Department'**).

2.5 Clause 5 of the Bill provides guidelines for the establishment of the Council. The Council will be appointed by the minister responsible for the heritage and arts (**'Minister'**) and will be chaired by the permanent secretary responsible for the heritage and arts. The Council comprises 10 *ex-officio* members and 4 other members, where the Director of Heritage and Arts (**'Director'**) will be the Secretary.

2.6 Clause 6 of the Bill articulates the list of guiding principles for the Council. The principles which will guide the decision-making and the functions of the Council is based on the State Party's obligations outlined in Chapter I.C, paragraph 15 of the Operational Guidelines for the Implementation of the World Heritage Convention (**'Operational Guidelines'**).

2.7 Clause 7 of the Bill outlines the functions of the Council.

- 2.8 Clause 8 of the Bill outlines the procedures for meetings and governance of the Council.
- 2.9 Clause 9 of the Bill outlines the procedures for members of the Council to disclose direct or indirect interest in any matter which may be in conflict with his or her role as a member of the Council.
- 2.10 Clause 10 of the Bill prescribes the role of the Secretary to the Council.
- 2.11 Clause 11 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.
- 2.12 Clause 12 of the Bill provides different sources of Council funds.
- 2.13 Clause 13 of the Bill articulates an efficient and proper financial management of accounts of the Council including auditing, to be conducted by the Office of the Auditor-General.
- 2.14 Clause 14 of the Bill requires the Council to submit its annual report to the Minister.
- 2.15 Clause 15 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 Property (**‘PWHP’**) in Fiji that meets the criteria for nomination set by the Council.
- 2.16 Clause 16 of the Bill focuses on the requirements and criteria set by the Council regarding any nomination by the public on whether a place can become a PWHP in Fiji.
- 2.17 Clause 17 of the Bill explains the process for determining nomination to the Register. The Council should ensure that public submissions have been called for in nominating a PWHP.
- 2.18 Clause 18 of the Bill provides that the management of any PWHP should comply with the standard required by the Council, by an approved management authority and according to the Management Plan.
- 2.19 Clause 19 of the Bill states that the Council may request the Council of the National Trust to be declared as a PWHP a National Heritage Area within the meaning provided in the National Trust of Fiji Act (Cap. 265).
- 2.20 Clause 20 of the Bill highlights that the Board of Trustees of Fiji Museum may declare a PWHP as a ‘monument’ within the meaning provided under section 2 of the Preservation of Objects of Archaeological and Paleontological Interest Act (Cap. 264).

- 2.21 Clause 21 of the Bill provides that the Council may request the Director of Local Government to grade any building within PWHP as part of the respective city or town planning scheme.
- 2.22 Clause 22 of the Bill provides for any development within the jurisdiction and approval of the Director of Town and Country Planning. Failure to comply with this provision will result in penalties which range from \$100,000 and \$600,000 and includes a term of imprisonment for up to 7 years. Penalties also apply to body corporate or unincorporate.
- 2.23 Clauses 23 and 24 of the Bill refer to two Lists; the Tentative List and the World Heritage List (**‘Lists’**) that have been established by UNESCO under the World Heritage Convention. These Lists are different from the Register in that the latter is mandated through national laws, is a national standards setting measure and sets specifically Fiji’s own list of Heritage Places as required under Article 11 of the Convention. The procedures are in 3 steps—

<i>Levels</i>	<i>Nominated by</i>	<i>List Inscribed</i>	<i>Source</i>
Step 1	Communities or Institutions in Fiji	Fiji Register for Potential World Heritage Place (National)	Communities, institutions, studies, research, archives etc.
Step 2	Fiji Heritage Council through the Minister approves nomination (Department of Heritage and Arts to organise nomination work)	UNESCO Tentative World Heritage List for Fiji (International)	Fiji Register for Potential World Heritage Place (communities and institutions)
Step 3	Fiji Heritage Council through the Minister approves nomination (Department of Heritage and Arts to organise nomination work – in-depth and detailed preparations)	UNESCO World Heritage List (International)	UNESCO Tentative World Heritage List for Fiji

- 2.24 Clause 25 of the Bill gives powers to the Minister to declare a PWHP as a World Heritage property (**‘WHP’**), where a PWHP has been included in the List.
- 2.25 Clause 26 of the Bill maintains that the management of any National World Heritage Properties must be in accordance with an approved Management Plan.
- 2.26 Clause 27 of the Bill also maintains that a person procuring or leasing a piece of land or property within the designated WHP needs to respect the conditions set by UNESCO regarding the inscribed WHP, and the conditions set by the Management Plan for the site.

- 2.27 Clause 28 of the Bill provides that before any development of the WHP is to be conducted, there has to be written approval from the Council. Failure to comply with this provision will result in penalties being imposed.
- 2.28 Clause 29 of the Bill allows for places that are declared as PWHP or WHP to have their own operational funds to cater for the management of the PWHP or WHP.
- 2.29 Clause 30 of the Bill provides for buffer zones that are areas established around or outside a PWHP or WHP for the protection of these areas from potential threats.
- 2.30 Clause 31 of the Bill refers to the process of the establishment of a buffer zone boundary.
- 2.31 Clause 32 of the Bill looks at the Buffer Zone Management Plan of a buffer zone which is developed by the Council for the purpose of the daily care of the protected site including the relevant buffer zone.
- 2.32 Clause 33 of the Bill further provides penalties for the destruction of buffer zone boundaries. The penalties range from \$50,000 to \$300,000 and include a term of imprisonment of up to 7 years. Penalties also apply to body corporates and unincorporates.
- 2.33 Clause 34 of the Bill gives the Minister the power to make regulations to give effect to the Act.
- 2.34 Clause 35 of the Bill gives power to the Council, with the approval of the Minister to establish guidelines for the administration of the Act.
- 2.35 Clause 36 of the Bill provides that the Act shall prevail where there are inconsistencies with other laws.
- 2.36 Clause 37 of the Bill dissolves the function of 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.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister.

A. SAYED-KHAIYUM
Attorney-General