

THE WESTERN PROVINCE PRESERVATION OF CULTURE ORDINANCE 1989

[Consolidation: This is a consolidation of the principal Ordinance and amendments or intended amendments as at 1 October 1995. Errors in spelling or grammar or omissions of words in the Gazetted Ordinance have been corrected in this Consolidation. This s not an authorised version of the Ordinance,

The principal Ordinance came into effect on 29/12/89 upon Gazettal under LN 01/89.

The enactments consolidated are:

WP Preservation of Culture Ordinance 1989.

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PART I PRELIMINARY

1. Citation and Commencement - This Ordinance may be cited as the Western Province Preservation of Culture Ordinance 1989 and shall come into force when it has been approved by the Minister in accordance with section 32 of the Provincial Government Act 1981 and published in the Solomon Islands Gazette.

2. Interpretation In this Ordinance unless the context requires otherwise:

"Act" means the Provincial Government Act 1981.

"Assembly" means the Western Provincial Assembly established in accordance with sections 1 (3)(a) and 7 of the Act.

"Authorised Officer" means any person who has been authorised under section 12 of this Ordinance.

"Developer" means any person who undertakes a Development Activity as defined in this Ordinance.

"Development Activity" means any undertaking or operation or works which modifies, disturbs or alters in a substantial way any land in the Western Province, including, but not limited to excavation activities, building activities, road building activities, engineering activities, logging activities, blasting activities, mining activities or agricultural activities.

"Executive" means the Western Provincial Executive established under section 22 of the Act.

"Land" means and includes land, reefs and lagoons in Western Province.

"Landowners" means any owner or owners or their authorised representatives

"National Museum" means the Solomon Islands National Museum in Honiara

"Person" means any person, persons, company, public body as herein defined, association, co-operative and any other body of persons.

"Protected Place" means a place associated with human activity in the past or in the present and of historical, cultural or archaeological significance declared as a Protected Place in accordance with section 5 hereof;

"Protection Order" means an order of the Assembly declaring an area or a site as a Protected Place;

"Public Body" includes any Provincial Government, Area Council Town Council, or Department of the Government and any undertaking by or of the Government

"Traditional Artefact" means any article or object made or existing for traditional or custom use including but not limited to personal and other adornments, household utensils, fish hooks, fishing equipment, weapons, tools, musical instruments, custom money, ritual objects, skulls, bones, statues or figures fashioned from wood, clay, bone, coral or stone. "Traditional artefact" does not include any article or object made for gift or sale or export as souvenirs, curios or mementos.

3. Repeals - Subject to section 6 hereof, the Western province Protection of Historic Places Ordinance 1986, the Western Council (Establishment of Protected Areas) By-laws 1978 and the Western Council (Prevention of Sale of Traditional Artefacts) By-laws 1978 are hereby repealed.

PART II PROTECTION OF TRADITIONAL ARTEFACTS

4. Offences relating to traditional artefacts - (I) Subject to subsection 4 of this section, any person who in anyway deals with an; traditional artefact is guilty of an offence.

(2) Subject to subsection (5) of this section any person who disturbs, damages, destroys delays, moves or removes or causes to be disturbed, damaged, destroyed, defaced, moved or removed any traditional artefact is guilty of an offence.

(3) Any person convicted of an offence under subsection (1) or subsection (2) of this section is liable to:

(i) a fine not exceeding \$2,000.00 or six months imprisonment or both such fine and imprisonment;

AND

(ii) the confiscation of the traditional artefact;

(iii) a penalty not exceeding \$2,000.00 to be paid to the Provincial Special Fund established in accordance with section 14 hereof.

- (4) Subsection (1) of this section does not apply to:
- (a) a person who sells or donates a traditional artefact to the National Museum, any National Cultural Centre, any Provincial or local museum or cultural centre approved by the Executive;
- (2) It is not an offence under this section:
- (a) for Solomon Islanders exercising customary rights within the Protected Place to use the Protected Place for its custom purpose;
 - (b) for individuals to use a Protected Place as temporary shelters in time of emergency;
 - (c) for the landowner(s) of a Protected Place or for Authorised Officers to carry out activities necessary to preserve the status quo of the Protected Place or to prevent damage to or deterioration or distinction of historical cultural or archaeological objects or remains within the Protected Place;
- for individuals with suitable professional qualifications and with the prior written, authorisation of the landowners(s) and the Assembly to carry out excavation of archaeological deposits or undertake survey work within any Protected Place.
- (3) Any person convicted of an offence under this section is liable to:
- (i) a fine not exceeding \$5,030.00 or imprisonment of up to one year or both fine and imprisonment: AND
 - (ii) a penalty not exceeding \$5,000.00 to be paid to the Provincial Special Fund established in accordance with section 14 of this Ordinance.

PART IV DEVELOPMENT ACTIVITIES

10. Development Activities and Procedures - (1) Any person who wishes to undertake any development activity on any land must prior to the commencement of that activity:

- (a) arrange at the expense of the developer for the area where it is proposed such development activity shall take place to be surveyed for the purpose of identifying, locating, marking and recording all places of historical, cultural or archaeological significance. Such survey must be carried out with the written contact of the landowner(s) and under the supervision of an Authorised Officer.
- (b) arrange at the expense of the developer for the area for a report of the said

survey to be submitted to the Executive, such report to be signed by the developer, the Authorised Officer and the landowner(s) or a representative or representatives of them;

(c) should the landowner(s) and/or the Authorised Officer require that any place be declared a Protected Place under section 5 of this Ordinance then the landowner(s) or the Authorised *Officer* must include a written request for such an Order in the said report or annexed to it and duly signed.

(2) The Executive must place the report and any written request from the landowner(s) or Authorised Officer before the next following meeting of the Assembly.

(3) The Assembly may:

(i) make an Order declaring any place referred to in the report a Protected Place, even if the landowner(s) or an Authorised Officer have not so requested

AND/OR

(ii) require the developer prior to commencement of the development activity at the developer's expense to arrange for an area to be systematically excavated by a professional archaeologist and details of the area and the findings of the excavations to be fully documented to the satisfaction of an authorised Officer
AND/OR;

(iii) require the developer prior to commencement of the development activity to arrange for an independent report from a professional archaeologist for the purpose of advising the Assembly in respect of the proposed development area;

(iv) authorise the, developer to proceed with the development activity subject only to the provisions of any other enactment or law or policy governing the development activity and in this case none of the sites identified in the report may hereafter be declared as a Protected Place without the consent of the developer.

(4) Any person undertaking development activities which have already commenced on the date this Ordinance comes into force must be given written notice signed by an Authorised Officer requiring that person to arrange the - survey and submit the report pursuant to subsections (1)(a) and (b) of this section within four months from the date of the notice or such longer period of time as the Authorised Officer agrees in writing.

(5) Any person who fails to conduct the survey as required under subsection (1)(a) of this section and/or who fails to submit the report as required under subsection (1)(b) of this section, or who return a report that that person knows to be false or inaccurate or who fails to include a site or sites of historical, cultural or archaeological significance of which that person is aware is guilty of an offence.

- (6) Any person convicted of an offence under this section is liable to:
- (i) a fine not exceeding \$10,000.00 or imprisonment of up to two years or both fine and imprisonment; AND
 - (ii) a penalty not exceeding \$5000.00 to be paid to the Provincial Special Pond established in accordance with section 14 of this Ordinance.
- (7) Where any person has been convicted of an offence under this section the Assembly may require the development activity to immediately cease until such time as the provisions of this section have been complied with.
- (8) This section does not prohibit any landowner(s) from making a private arrangement between the landowner(s) and the developer and any other person for the protection of a place of historical, cultural or archaeological significance.

PART V MISCELLANEOUS

11. Offences by Individuals of body corporate etc. -Where a body corporate, association or co-operative commits an offence under this Ordinance with the consent or connivance of or because of neglect by an individual the individual is guilty of the same offence and liable to the same penalties as the body corporate, association or co-operative if at the time of the offence

- (a) the individual is or was a director, manager, secretary or other senior officer of the body corporate, association or co-operative; OR
- (b) the individual is or was purporting to or holding out that that individual is such an officer; OR
- (c) the individual is or was a member of a body corporate association or co-operative which is managed by its members.

12. Authorised Officers - The Executive or the Assembly may authorise any person to carry out duties or to have powers under this Ordinance.

13. Powers of landowners police officers and Authorised Officers - (I) It shall be lawful for any landowner, police officer or Authorised Officer:

- (a) to make enquiries at all reasonable times to ascertain whether any offence under this Ordinance is being or has been committed;
- (b) to seize any traditional artefact of historical, cultural or archaeological object or remains if the landowner, police officer or Authorised Officer has reasonable grounds for belief that such traditional artefact or historical, cultural or

archaeological objector remains in possession of a person in breach of this Ordinance and to retain such traditional artefact or historical, cultural or archaeological object or remains until such time as due enquiries have been completed PROVIDED HOWEVER that if there has been no breach of this Ordinance then such traditional artefact or historical, cultural or archaeological object or remains must be returned to the person from whom it was seized. No claim or action can be made or brought for damages or compensation relating to such seizure and retention.

(2) Any person who obstructs or impedes any landowner, police officer or Authorised Officer acting in due exercise of that person's powers under this Ordinance is guilty of an offence.

(3) Any person convicted of an offence under this section is liable to:

(i) a fine not exceeding \$500 or to imprisonment for up to three months or to both fine and imprisonment; AND

(ii) a penalty not exceeding \$500.00 to be paid to the Provincial Special Fund established in accordance with section 14 hereof.

14. Provincial Special Fund - (1) The Assembly must set up a Provincial Special Fund in accordance with section 26 of the Western Province Financial Management Ordinance 1984 which fund must be administered in accordance with that Ordinance and which fund is to be called the Preservation of Culture Fund ('the Fund').

(2) The Fund must be applied:

(i) for the administration of this Ordinance;

(ii) for the survey or archaeological work undertaken for the purposes of preserving the culture of Western Province;

(iii) for the marking, maintenance, protection or preservation of Protected Places

(iv) for public awareness programmes and publications relating to the preservation of culture;

(v) for such other purposes as the Assembly authorises.

15. Confiscation – Where a person is convicted of an offence under this Ordinance and any traditional artefact or historical, cultural or archaeological object or remains has been seized or confiscated then upon such conviction the thing so seized or confiscated becomes the property of the Western Provincial Assembly and upon the expiration of the time for taking an appeal from the conviction, the Assembly shall in its absolute

discretion either return the thing seized or confiscated to its original owner(s) or donate it to the National Museum, any national cultural centre, any Provincial or local museum or cultural centre approved by the Executive.

16. Rules and Regulations - The Executive may make rules, regulations or orders for the better carrying out of this Ordinance.

17. No bar to Civil Claims - This Ordinance does not bar any civil claims or relieve any person from liability for damages for any person(s) or property injured or damaged unless otherwise provided.